TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1919

No. [redacted]29

THE UNITED STATES, PETITIONER,

vs.

WILLIAM B. POLAND AND FREDERICK WILLIAM LOW.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

PETITION FOR CERTIORARI FILED MARCH 31, 1917.
CERTIORARI AND RETURN FILED MAY 15, 1917.

(25845)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 450.

THE UNITED STATES, PETITIONER,

vs.

WILLIAM B. POLAND AND FREDERICK WILLIAM LOW.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

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a UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

THE UNITED STATES OF AMERICA, APPELLANT. vs. WILLIAM B. POLAND AND FREDERICK WILLIAM LOW, appellees.	No. 2621.

Transcript of record. Upon appeal from the United States District Court for the District of Alaska, Division No. 3.

1 *Names and addresses of attorneys of record.*

William N. Spence, United States attorney, and his assistant, William A. Munly, Valdez, Alaska, attorneys for plaintiff and plaintiff in error.

S. O. Morford, Seward, Alaska, attorney for the defendant and defendant in error. [1*]

In the District Court for the District of Alaska, Division Number Three.

UNITED STATES OF AMERICA, PLAINTIFFS, vs. WILLIAM B. POLAND AND FREDERICK WILLIAM LOW, defendants.	#593.

Application for leave to file amended complaint.

Comes now the plaintiffs and make application to the court for leave to file the amended complaint tendered herewith in the above-entitled cause.

G. B. BRUBAKER,
Assistant United States Attorney.

Due service of the foregoing motion, by receipt of a copy thereof, is hereby acknowledged at Seward, Alaska, this 15th day of October, 1914.

S. O. MORFORD,
Attorney for Defendants.

2 (Endorsed:) Filed in the district court, Territory of Alaska, Third Division. Oct. 15, 1914. Arthur Lang, clerk. By T. P. Geraghty, deputy. [2–3]

*Page number appearing at foot of page of original certified transcript of record.

In the District Court for the Territory of Alaska, Division Number Three.

UNITED STATES OF AMERICA, PLAINTIFFS,
vs.
WILLIAM B. POLAND AND FREDERICK WILLIAM LOW, defendants. } No. 593.

Order granting leave to file amended complaint.

This cause coming on for hearing this day, on the application of the plaintiffs for leave to file the amended complaint tendered with said application, G. B. Brubaker, assistant United States attorney, appearing on behalf of the plaintiffs, and the defendants appearing by their attorney, S. O. Morford, Esq., good cause appearing therefore:

It is hereby ordered that plaintiffs be, and they are hereby, granted leave to file said amended complaint.

And it further ordered that the defendants have forty days from the date of the service of said amended complaint within which to answer the same.

Done in open court this 15th day of October, 1914.

FRED M. BROWN,
District Judge.

3 To which order defendant excepts, and exception is allowed.

FRED M. BROWN,
District Judge.

(Endorsed:) Filed in the District Court, Territory of Alaska, Third Division. Oct. 15, 1914. Arthur Lang, clerk. By T. P. Geraghty, deputy.

Entered: Court Journal S-1, page 319. [4]

In the District Court for the District of Alaska, Division Number Three.

UNITED STATES OF AMERICA, PLAINTIFFS,
vs.
WILLIAM B. POLAND AND FREDERICK WILLIAM LOW, defendants. } In Equity.

Amended complaint.

Come now the above-named plaintiffs, the United States of America, by and through William N. Spence, United States attorney for the Third Division of the District of Alaska, acting under authority and by direction of the Attorney General of the United States, and for cause of action against the above-named defendants alleges:

I.

That heretofore, to wit, on or about the 6th day of September, 1905, the above-named defendant, William B. Poland, entered

upon and took possession of the land hereinafter described, said land being then and there part of the public lands and public domain of the United States, with the purpose and intent of acquiring title thereto as the assignee of certain soldier's additional homestead entry rights, pursuant to section 2306 of the Revised Statutes of the United States and acts amendatory thereto, and caused an official survey thereof to be made, whereby said land was surveyed in the form of two tracts or parcels of land: that said land, entered and surveyed as aforesaid, is in the Kenai Recording Precinct, District of Alaska, and more particularly bounded and described as follows: [5]

United States Survey No. 241.

Beginning at corner No. 1 on the shore of Resurrection Bay, latitude sixty degrees seven minutes north, longitude one hundred and forty-nine degrees seven minutes west, said point being marked by an iron pin three inches in diameter, marked "S. 241, cor. No. 1"; thence south sixty-one degrees thirty-seven minutes west two and sixty-one-hundredths chains; thence south seventy-eight degrees west nineteen and ten-hundredths chains; thence south fifty-two degrees fifteen minutes west ten chains; thence south seventy-one degrees fifty minutes west three chains; thence south thirty-one degrees twenty-seven minutes west three and twenty-hundredths chains to corner No. 2, which corner is marked by an iron pipe three inches in diameter, marked "S. 241, cor. No. 2"; thence west six and fifty-nine hundredths chains to corner No. 3, which corner is marked by an iron pipe three inches in diameter, marked "S. 241, cor. No. 3"; thence north forty-seven and eighty-eight-hundredths chains to corner No. 4, which corner is marked by an iron stake three inches in diameter, marked "S. 241, cor. No. 4"; thence east forty chains to corner No. 5, which corner is marked by iron pipe three inches in diameter, marked "S. 241, cor. No. 5"; thence south thirty-two and eighty-eight-hundredths chains to corner No. 1, the place of beginning, containing one hundred fifty-nine and seventy-five one-hundredths acres, being the land embraced in United States Survey No. 241, according to the official plat of said survey returned to the General Land Office by the Surveyor General, and:

United States survey No. 242.

Beginning at corner No. 1 near the north shore of Resurrection Bay, identical with corner No. 5, U. S. survey No. 241, an iron pipe three inches in diameter, marked S. 242, cor. No. 1; thence west 40 chains to corner No. 2, an iron pipe three inches in diameter, marked S. 242, cor. No. 2; thence north 40 chains to corner No. 3, an iron pipe three inches in diameter, marked S. 242, cor. No. 3; thence east 40 chains to corner No. 4, an iron pipe three inches in diameter marked S. 242, cor. No. 4; thence south 40 chains to corner No. 1,

the place of beginning, containing one hundred and sixty acres,
6 being the land embraced within United States survey No. 242, according to the official plat of said survey returned to the General Land Office by the Surveyor General.

That the land embraced within said survey constitutes and is a single body of land, containing 319.75 acres.

II.

That thereafter, to wit, on the 26th day of April, 1906, the said William B. Poland filed in the United States land office, at Juneau, Alaska, two applications [6] whereby he, as the assignee of certain soldier's additional homestead entry rights applied under section 2306 of the Revised Statutes of the United States to enter the land above described, one of said applications covering the entry embraced in said survey No. 241 and the other application covering the land embraced in said survey No. 242.

III.

That thereafter, to wit, on the 29th day of January, 1908, the requisite proofs having been made, a patent for the land embraced in said survey No. 241 was issued to the said William B. Poland, a copy of which patent is hereto attached, marked Exhibit "A," and made a part hereof.

IV.

That, on the 30th day of July, 1906, the defendant, William B. Poland, filed or caused to be filed in the United States land office at Juneau, Alaska, in support of his said application for a patent
7 to the land embraced in said survey No. 242, an affidavit, subscribed and sworn to by H. E. Revell and Frank Ballaine, which affidavit contained the following false statement:

"Said tract of land (referring to the land embraced in said survey No. 242) does not exceed 160 acres in extent and is in frontage less than 160 rods along the shore of any navigable water, and is more than eighty rods distant from any other survey or entry under the provisions of said act of May 14th, 1898," the act referred to in said statement being act of Congress entitled "An act extending the homestead laws and providing for a right of way for railroads in the District of Alaska, and for other purposes," approved May 14, 1898, as amended by the act of Congress entitled "An act to amend [7] section one of the act of Congress approved May fourteenth, eighteen hundred and ninety-eight, entitled 'An act extending the homestead laws and providing for a right of way for railroads in the District of Alaska,'" approved March 3, 1903.

That said statement was and is false in this, that said tract of land referred to in said affidavit was not more than eighty rods distant

from any other survey or entry under the provisions of said act of May 14th, 1898, as then amended, but was adjoining and contiguous to that certain tract of land embraced within said survey No. 241, upon which a soldier's additional homestead entry and survey had been theretofore made by the said William B. Poland as here-
8 inbefore set forth, and was part and parcel of a single body of land containing more than one hundred and sixty acres, to wit, 319.75 acres, entered by soldier's additional homestead entry rights under said act of May 14th, 1898, as amended, said single body of land being the land embraced within said surveys No. 241 and No. 242.

That by means of said false affidavit filed as aforesaid the said from the officials of the land Department of the United States the fact that land in excess of one hundred and sixty acres in a single body was entered by soldier's additional homestead right under the application of the said defendant, William B. Poland, in support of which application said affidavit was filed.

V.

That by means of said false affidavit filed as aforesaid the said defendant, William B. Poland, knowingly, falsely, and fraudulently represented to plaintiffs and to the officials of the Land Department of the United States, whose duty it was to pass upon said application, that no land in excess of one hundred and sixty acres in a single [8] body in Alaska was entered and applied for by soldier's additional homestead rights under said application, whereas in truth and in fact land in excess of one hundred and sixty acres in a single body in Alaska was thereby entered and applied for under soldier's additional homestead rights, which fact the said defendant, William B. Poland, then and there well knew; that the said defendant, William B. Poland, caused said false affidavit to be filed as aforesaid and
9 said false and fraudulent representations to be made by means thereof, with the intent and for the purpose of deceiving said officials of the Land Department of the United States and leading them erroneously to believe that the land embraced within said survey No. 242 was open and subject to entry and patent under soldier's additional homestead rights and to induce said officials to cause a patent to issue therefor, and with the further intent to defraud plaintiffs and unlawfully to deprive plaintiffs of the use and enjoyment of said land embraced in said survey No. 242.

VI.

That the Assistant Commissioner of the General Land Office of the United States, relying upon the aforesaid false and fraudulent representations and believing them to be true and being induced thereby so to do, in the erroneous and mistaken belief that the land

embraced within said survey No. 242 was open and subject to entry and patent under soldier's additional homestead rights and that the defendant, William B. Poland, was lawfully entitled to a patent thereto, mistakenly, erroneously, without authority, and in violation of law, and without jurisdiction so to do, approved said entry and application for a patent to the land embraced in said survey No. 242; and thereafter, to wit [9], on the 22d day of March, 1909, the President of the United States, likewise relying upon and being likewise deceived and induced by said false and fraudulent representations, under the same misapprehension as to the law and the facts, mistakenly, erroneously, without authority, and in violation of law, and without jurisdiction so to do, caused to be signed, executed, and delivered to the said defendant, William B. Poland, a patent to the land embraced within said survey No. 242, a copy of which patent is hereto attached, marked Exhibit "B," and made a part hereof.

10

VII.

That Congress passed an act approved March 3, 1903, entitled "An act to amend section one of the act of Congress approved May 14, 1898, entitled 'An act extending the homestead laws and providing for a right of way for railroads in the District of Alaska,'" which, among other things, provides that no more than one hundred and sixty acres shall be entered in any single body by soldier's additional homestead right.

That the land embraced within said survey No. 242 was by the provision of the act of Congress above mentioned reserved from entry and patent under soldier's additional homestead right by virtue of the soldier's additional homestead entry theretofore made by the said defendant, William B. Poland, upon the land embraced within said survey No. 241; that by force of the foregoing the patent issued to the said defendant, William B. Poland, for the land embraced within said survey No. 242 was and is null and void for the reason that more than one hundred and sixty acres of land in a [10] single body entered by soldier's additional homestead rights was thereby attempted to be granted to the defendant William B. Poland.

11

VIII.

That thereafter, to wit, on the 25th day of May, 1909, the said William B. Poland made, executed, and delivered to the above-named defendant, Frederick William Low, a deed, wherein and whereby he conveyed, bargained, sold, and confirmed unto the said Frederick William Low, and to his heirs and assigns forever, the land hereinbefore described, and covenanting to and with the said Low to warrant and defend the same against any and all persons claiming or to claim title thereto; a copy of which deed is hereto attached, marked exhibit "C," and made a part hereof.

IX.

That the land embraced within said survey No. 242 during all the times hereinbefore mentioned was and now is public land and part of the public domain of the United States, and the said United States have been at all times, and now are, entitled to the immediate possession thereof; that the aforesaid patent to the land embraced within said survey No. 242 and the deed hereinbefore mentioned, in so far as said deed refers to the land embraced within said survey No. 242 are, and each of them is, a cloud upon plaintiffs' title to said land.

X.

That plaintiffs have no plain, speedy, or adequate remedy at law.

Wherefore, plaintiffs pray that said patent for the land embraced within said survey No. 242 be vacated, cancelled, and declared
12 to be null and void, and that said [11] deed from the defendant William B. Poland to Frederick William Low, in so far as the same refers to the land embraced within said survey No. 242, be vacated, cancelled, and declared to be null and void; that plaintiffs have and recover from the defendants their costs and disbursements herein and for such further relief as to the court may seem just and equitable in the premises.

WILLIAM X. SPENCE,
United States Attorney for the Third Division of the District of Alaska.
GUY B. BRUBAKER,
Assistant United States Atty.

UNITED STATES OF AMERICA,
District of Alaska, Third Division, ss:

Guy B. Brubaker, being first duly sworn, upon oath deposes and says: That he is the assistant United States attorney for the third division, Territory of Alaska, and attorney for the plaintiffs in the foregoing cause; that he makes this verification for and on behalf of said plaintiffs; that the foregoing amended complaint is signed by him in his own proper handwriting; that he has read the same; has knowledge of all the material allegations therein set forth; and that he believes the same to be true.

G. B. BRUBAKER.

Subscribed and sworn to before me this 15 day of October, *September*, 1914.

[SEAL.]

WM. H. WHITTLESEY,
Notary Public for Alaska.

13 Filed in the District Court, Territory of Alaska, third division. Oct. 15, 1914. Arthur Lang, clerk. By T. P. Geraghty, deputy. [12]

Exhibit "A" [to amended complaint].

The United States of America to all to whom these presents shall come, greeting:

Homestead certificate No. 80. Application 80.

Whereas there has been deposited in the General Land Office of the United States a certificate of the register of the land office at Juneau, Alaska, whereby it appears that, pursuant to the act of Congress approved 20th May, 1862, "To secure homesteads to actual settlers on the public domain," and the acts supplemental thereto, including the act of March 3, 1891 (26 Statutes, 1099), and the act of May 14, 1898 (30 Statutes, 409), the claim of William B. Poland, assignee of William F. Isbell and Edward McArdle, has been established and duly consummated in conformity to law, for the lands embraced in U. S. Survey No. 241, situated on the shore of Resurrection Bay, Alaska, more particularly bounded and described as follows, with magnetic variation twenty-seven degrees, two minutes east:

Beginning at corner No. 1 on the shore of Resurrection Bay, latitude sixty degrees seven minutes north, longitude one hundred forty-nine degrees seven minutes west, said point being marked by an iron pin three inches in diameter, marked "S. 241, cor. No. 1,"
14 thence south sixty-one degrees thirty-seven minutes west two and sixty-two-hundredths chains; thence south seventy-eight degrees, west nineteen and ten-hundredths chains; thence south fifty-two degrees fifteen minutes west ten chains; thence south seventy-one degrees fifty minutes west three chains; thence south thirty-one degrees twenty-seven minutes west three and twenty-hundredths chains to corner No. 2, which corner is marked by an iron pipe three inches in diameter, marked "S. 241 cor. No. 2"; thence west six and fifty-nine-hundredths chains to corner No. 3, which corner is marked by iron pipe three inches in diameter, marked "S. 241, cor. No. 3"; thence north forty-seven and eighty-eight-hundredths chains to corner No. 4, which corner is marked by an iron stake three inches in diameter, marked "S. 241, cor. No. 4"; thence east forty chains to corner No. 5, which corner is marked by iron pipe three inches in diameter, marked "S. 241, cor. No. 5"; thence south thirty-two and eighty-eight-hundredths chains to corner No. 1, the place of beginning, containing one hundred fifty-nine and seventy-five-hundredths acres.

Now know ye, that the United States of America, in consideration of the premises, have given and granted, and by these presents do give and grant, unto the said William B. Poland, and to his heirs the lands above described; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature hereunto belonging, unto the said William B. Poland and to his heirs and assigns forever. And there is
15 reserved, from the lands hereby granted, a right of way thereon for ditches or canals constructed by the authority of

the United States and a roadway sixty feet in width parallel to the shore line as near as may be practicable [13] shall be reserved for the use of the public as a highway. And reserving to the United States the right to regulate the taking of salmon and to do all things necessary to protect and prevent the destruction of salmon in all waters of the lands hereby granted, and ingress and egress are reserved to the public on the waters of all streams, whether navigable or otherwise.

In testimony whereof, I, Theodore Roosevelt, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the twentieth day of January, in the year of our Lord one thousand nine hundred and eight and of the Independence of the United States the one hundred and thirty-second.

By the President.

THEODORE ROOSEVELT.

By H. W. SANFORD,

Recorder of the General Land Office. [14]

16 *Exhibit "B" [to amended complaint].*

The United States of America to all to whom these presents shall come, greeting:

Juneau 0289. Homestead Certificate No. —. Application.

Whereas there has been deposited in the General Land Office of the United States a certificate of the register of the land office at Juneau, Alaska, whereby it appears that, pursuant to the act of Congress approved 20th May, 1862, "To secure homesteads to actual settlers on the public domain," and the acts supplemental thereto, the claim of William B. Poland, assignee of Harold M. Fay, minor orphan child of Clinton B. Fay by Ida L. Fay, guardian, and Wyllis S. Walkley, has been established and duly consummated, in conformity to law, for the lands embraced in U. S. Survey No. 242, more particularly bounded and described as follows: Beginning at corner No. 1, near the north shore of Resurrection Bay, identical with corner No. 5, U. S. Survey No. 241, an iron pipe three inches in diameter, marked "S. 242, cor. No. 1"; thence west forty chains to corner No. 2, an iron pipe three inches in diameter, marked "S. 242, cor. No. 2," thence north forty chains to corner No. 3, an iron pipe three inches in diameter marked "S. 242, cor. No. 3," thence east 40 chains to corner No. 4, an iron pipe three inches in diameter marked "S. 242, cor. No. 4," thence south 40 chains to corner No. 1, the place of beginning,

17 in the District of Alaska, containing one hundred sixty acres, according to the official plat of the survey of the said land, returned to the General Land Office by the Surveyor General.

Now know ye that there is therefore granted by the United States unto the said William B. Poland the tract of land above described; to have and to hold the said tract of land, with the appurtenances

thereof, until the said William B. Poland and to his heirs and assigns forever; subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local customs, laws, and decisions of courts, and also subject to the right of the proprietor of a vein or lode to extract and remove his ore therefrom should the same be found to penetrate or intersect the premises hereby granted, as provided by law. And there is reserved from the lands hereby granted a right of way thereon for ditches or canals constructed by the authority of the United States.

In testimony whereof I, William H. Taft, President of the United States of America, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington the twenty-second day of March in the year of our Lord one thousand nine
18 hundred and nine, and of the Independence of the United States the one hundred and thirty-third.

By the President:

[SEAL.] WM. H. TAFT.

By M. W. YOUNG, *Secretary.*

H. W. SANFORD,

Recorder of the General Land Office. [15]

Demurrer [of William B. Poland et al. to amended complaint].

This indenture, made this 25th day of May, A. D. 1909, between Wm. B. Poland, a bachelor, by Francis H. Stewart, his attorney in fact, under power of attorney, the party of the first part, and Frederick William Low, of the city of Seattle, county of King, and State of Washington, party of the second part:

Witnesseth, That the said party of the first part, for and in consideration of the sum of one ($1.00) dollar gold coin of the United States of America, to him in hand paid by the said party of the second part, and other good and valuable considerations, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, convey, and confirm unto the said party of the second part, and to his heirs and assigns, that parcel or parcels of land situated and being at the head of Resurrection Bay, in the Territory of Alaska, covered by United States official surveys No. 241 and 242 and patents from the United States Government for same, described as follows, with magnetic variation twenty-seven degrees and two minutes east, U. S. Survey No. 241:

19 Beginning at corner No. 1 on the shore of Resurrection Bay, latitude sixty degrees seven minutes north, longitude one hundred forty-nine degrees seven minutes west, said point being marked by an iron pin three inches in diameter, marked "S. 241, cor. No. 1"; thence south sixty-one degrees thirty-seven minutes west, two and sixty-one hundredths chains; thence south seventy eight degrees, west nineteen and ten hundredths chains; thence south

fifty-two degrees fifteen minutes west, ten chains; thence south seventy-one degrees fifty minutes west, three chains; thence south; thence thirty-one degrees twenty-seven minutes west, three and twenty hundredths chains to corner No. 2, which corner is marked by an iron pipe three inches in diameter, marked "S. 241, cor. No. 2"; thence west six and fifty-nine hundredths chains to cor. No. 3, which corner is marked by iron pipe three inches in diameter, marked "S. 241, cor. No. 3"; thence north forty-seven and eighty-eight hundredths chains to corner No. 4, which corner is marked by an iron stake three inches in diameter, marked "S. 241, cor. No. 4"; thence east forty chains to corner No. 5, which corner is marked by iron pipe three inches in diameter, marked "S. 241, cor. No. 5"; thence south thirty-two and eighty-eight hundredths chains to corner No. 1, the place of beginning, containing one hundred fifty-nine and seventy-five hundredths acres:

Also the lands embraced in U. S. survey No. 242, magnetic
20 variation twenty-seven degrees and two minutes east, beginning at corner No. 1 near the north shore of Resurrection Bay, which corner is identical with corner No. 5, U. S. survey No. 241, said corner being marked by iron pipe three inches in diameter, marked "S. 242, cor. No. 1," west 40.00 chains to corner No. 2, said corner being marked by iron pipe three inches in diameter, marked "S. 242, cor. No. 2"; thence north 40.00 chains to corner No. 3, said corner being marked by iron pipe three inches in diameter, marked "S. 242, cor. No. 3"; thence east 40.00 chains to corner No. 4, said corner being marked by iron pipe three inches in diameter, marked "S. 242, cor. No. 4"; thence south 40.00 chains to corner No. 1, the place of beginning, containing one hundred and sixty acres. [16]

Together with the appurtenances, to have and to hold the said premises with the appurtenances, unto the said party of the second part, and to his heirs and assigns forever.

And the said party of the first part, his heirs, executors, and administrators, does by these presents covenant, grant, and agree to and with the said party of the second part, his heirs and assigns, that he, the said party of the first part, his heirs, executors, and administrators, all and singular, the premises hereinabove conveyed, described, and granted or mentioned, with the appurtenances, unto the said party of the second part, his heirs and assigns, and against all and every person or persons whomsoever lawfully claiming or to claim the same or any part thereof shall and will warrant and forever defend.

21 In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

WILLIAM B. POLAND. [SEAL.]
By FRANCIS H. STEWART. [SEAL.]
His Attorney in Fact.

Signed, sealed, and delivered in presence of
G. S. SCHOFIELD,
GEORGE P. BAGG.

STATE OF NEW YORK, } ss.
County of New York, }

This is to certify that on this 25th day of May, A. D. 1909, before me, the undersigned, a notary public in and for the county of New York, and State of New York, duly commissioned and sworn, personally came Francis H. Stewart to me known to be the individual described in and who executed the within instrument, and acknowledged to me that he signed and sealed the same as his free and voluntary act and deed as the agent and attorney in fact for and on behalf of William B. Poland, bachelor, and for the uses and purposes therein mentioned.

Witness my hand and official seal the day and year in this certificate first above written.

LETITIA M. HODGINS,
Notary Public in and for New York County, New York.

STATE OF NEW YORK, } ss.
County of New York, }

I, Peter J. Dooling, clerk of the county of New York, and also clerk of the supreme court for the said county, the same being a court of record, do hereby certify that Letitia M. Hodgins, whose name is subscribed to the certificate of the proof or the acknowledgment of the annexed instrument and thereon written, was at the time of taking such proof or acknowledgment a notary public in and for the county of New York, dwelling in the said county, commissioned and sworn, and duly authorized to take the same. And further that I am well acquainted with the handwriting of such notary and verily believe that the signature to the said certificate of proof or acknowledgment is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court and county, the 28th day of May, 1909.

PETER J. DOOLING, *Clerk.*
[SEAL.]

The foregoing instrument filed for record NOV. 18, 1909, at 11 a. m. by request S. O. Morford.

J. J. FINNEGAN,
District Recorder. C. [17].

Due service of the foregoing amended complaint is hereby acknowledged.

At Seward, Alaska, this 15th day of October, 1914.

S. O. MORFORD,
Attorney for Defendants. [18.]

23 In the District Court for the Territory of Alaska, Third Division.

UNITED STATES OF AMERICA, PLAINTIFF, *vs.* WILLIAM B. POLAND AND FREDERICK WILLIAM LOW, DEFENDANTS.	No. 593.

Demurrer.

Come now the defendants, William B. Poland and Frederick William Low, by their attorney, and demur to plaintiff's amended complaint on file herein, and for cause of demurrer state that said amended complaint does not state facts sufficient to constitute a cause of action against these defendants or either of them, either in law or equity.

S. O. MORFORD,
Attorney for Defendants.

Service of copy accepted this 24 day of November, A. D. 1914.

WM H. WHITTLESEY,
Asst. U. S. Attorney.

(Endorsed:) Filed in the District Court, Territory of Alaska, Third Division. Dec. 23, 1914. Arthur Lang, clerk. By T. P. Geraghty, Deputy. [19]

24 In the District Court for the District of Alaska, Division Number Three.

UNITED STATES OF AMERICA, PLAINTIFF, *vs.* WILLIAM B. POLAND AND FREDERICK WILLIAM LOW, DEFENDANTS.	No. 593.

Demurrer of Defendant Frederick William Low [to amended complaint].

Comes now Frederick William Low, one of the defendants above named, by his attorneys, Ira Bronson and S. O. Morford, and demurs to the amended complaint of the plaintiff herein on the ground that said complaint does not state facts sufficient to constitute a cause of action or to entitle the plaintiffs to any relief in equity against this defendant.

S. O. MORFORD AND IRA BRONSON,
Attorneys for Defendant, Frederick William Low.

(Endorsed:) Filed in the District Court, Territory of Alaska, Third Division. Feb. 19, 1915. Arthur Lang, clerk. By T. P. Geraghty, Deputy. [20]

25 In the District Court for the District of Alaska, division number three.

UNITED STATES OF AMERICA, PLAINTIFFS,
vs.
WILLIAM B. POLAND AND FREDERICK WILLIAM LOW, defendants. } No. 593.

Demurrer of defendant, William B. Poland [to amended complaint].

Comes now William B. Poland, one of the defendants above named, by his attorneys, S. O. Morford and Ira Bronson, and demures to plaintiffs' amended complaint on the ground that it does not state facts sufficient to constitute a cause of action at law or to entitle plaintiffs to relief in equity against this defendant, and upon the further ground that it appears from the face of the complaint that this defendant is not a party to this action.

S. O. MORFORD and
IRA BRONSON,
Attorneys for Defendant, William B. Poland.

(Endorsed:) Filed in the District Court, Territory of Alaska, third division. Feb. 19, 1915. Arthur Lang, clerk. By T. P. Geraghty, deputy. [21]

26 In the District Court for the Territory of Alaska, third division.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
WILLIAM B. POLAND AND FREDERICK WILLIAM LOW, defendants. } No. 593.

Decision on demurrer [to amended complaint].

On January 20, 1908, a patent for a fraction less than 160 acres of land, situate on the shore of Resurrection Bay, near Seward, Alaska, and designated as U. S. survey #241, was issued to the defendant Poland, under S. A. H. right. On the 22d day of March, 1909, a second patent was issued to said defendant Poland for 160 acres of land embraced within U. S. survey #242, which adjoins the said survey #241, on the northerly side; applications for patent to both of said surveys #241 and 242 having been made on the 26th day of April, 1906, in the U. S. land office at Juneau, Alaska.

The plaintiff brings this action to cancel the patent for the land embraced in said survey #242 for the reason that it is in violation of the terms of an act of Congress approved March 3, 1903 (sec. 101, Compiled Laws of Alaska), which provides that "no more than 160 acres shall be entered in 'any single body' by such scrip, lieu

27 selection, or soldier's additional homestead right," plaintiff's contention being that the two surveys, being contiguous, constitute a "single body" within the meaning of said law.

Plaintiff's complaint alleges that the Assistant Commissioner of the General Land Office, under the erroneous and mistaken belief that the laws gave said Poland a right to said land and that he was entitled under the law to receive patent therefor, mistakenly and erroneously, without authority, and in violation of law, and without jurisdiction so to do, approved the entry and application of the said Poland for the land embraced with said survey =242. [22]

The complaint further alleges that Poland filed or caused to be filed in the United States Land Office at Juneau, Alaska, "in support of his said application for a patent to the land embraced in said survey =242 an affidavit subscribed and sworn to by H. E. Revell and Frank Ballaine, which affidavit contained the following false statement:

"'Said tract of land (referring to the land embraced in said survey =242) does not exceed 160 acres in extent and is in frontage less than 160 yards along the shore of any navigable water, and is more than eighty rods distant from any other survey or entry under the provisions of said act of May 14, 1898,' the act referred to in said statement being the act of Congress entitled 'An act ex-
28 tending the homestead laws and providing for a right of way for railroads in the District of Alaska, and for other purposes,' approved May 14, 1898, as amended by the act of Congress entitled 'An act to amend section one of the act of Congress approved May fourteenth, eighteen hundred and ninety-eight, entitled "An act extending the homestead laws and providing for a right of way for railroads in the district of Alaska," approved March 3, 1903,'"

I know of no law requiring one location or survey under said act to be distant eighty rods from any other survey or entry made under the provisions of the said act. Said act does provide that "along the shore of any navigable water a space of at least 80 rods shall be reserved from entry between all such claims." But survey =242 is not along the shore of any navigable water, but is on the northerly or landward side of said survey =241, which is along the shore of Resurrection Bay. If one location or entry under said act was required to be eighty rods distant from another survey or entry under the provisions of the same act, it would lead to a manifest absurdity, in that each location or survey would stand alone surrounded by vacant lands on each side and corner, a distance of eighty rods in each direction.

The United States attorney contends that the intent of Congress in enacting this law was to restrict one individual from acquiring title to more than 160 acres, even by separate locations and entries, if the same be contiguous, but the act does not say so; it simply says that not more than 160 acres shall be *entered* in "any single body."

29 The words "locate" and "enter" are practically synonymous, each being a step or proceeding in the matter of acquiring title from the United States to public lands.

The United States mining laws for many years have provided that [23] no location of a placer claim shall exceed 160 acres for any one person or association of persons (sec. 2330, Rev. Stats.), but it has never been claimed that this restricted the same person or association of persons from making two locations immediately adjoining. The same reasoning would apply to one case as to the other, but in this case, if Congress intended to restrict an individual from locating or acquiring title to more than one 160-acre tract of land, it would have been very easy to have expressed that intent. It seems to me that it would violate all rules of statutory construction if we should read into said act something which was not expressed in it. The language is plain, clear and complete and does not require any forced construction to ascertain its meaning or intent.

Congress (wherever it has sought to restrict the right of an individual to more than one claim or to a certain number of acres, has always expressly provided such restriction: for instance, in limiting an individual to one homestead or one preemption claim, or other claims upon the public domain of the United States. The only limitation sought to be made upon the number of claims which can be located in Alaska was by an act of Congress approved August 1, 1912 (Sec. 129 C. Comp. Laws of Alaska), which provides

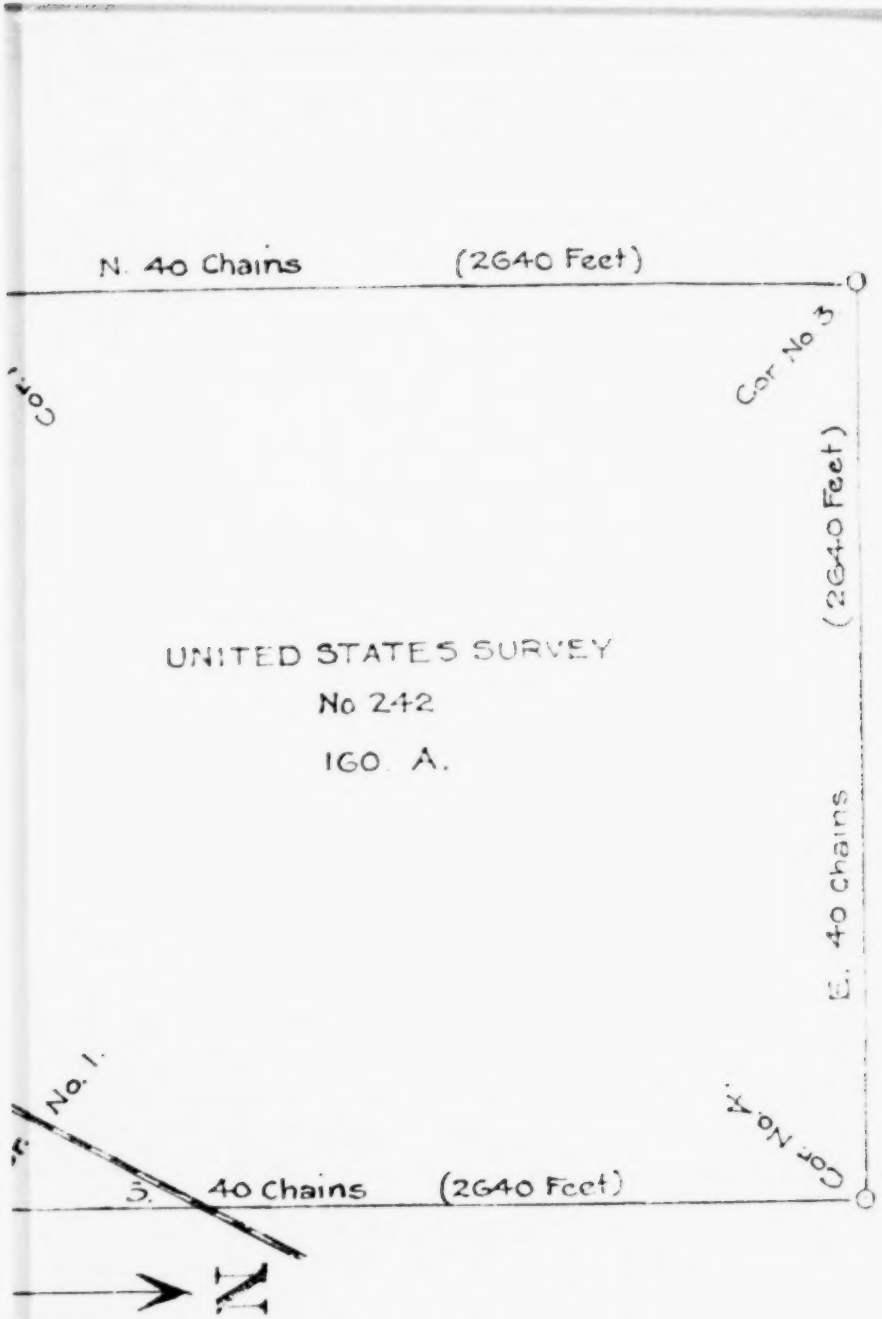
30 that "no person shall thereafter locate, cause, or procure to be located for himself more than two placer mining claims in any calendar month, provided that one or both of such locations may be included within an association claim."

It might be argued that it is a useless thing to provide that no more than 160 acres of land shall be entered in one single body under said act of March 3, 1903, if two such locations or claims could be entered or patented and they adjoined each other, but this is exactly what has been done for nearly fifty years in another class of public land entries.

In the case of placer mining claims, of 160 acres, it might just as well be asked, why should a claim or location be limited to 160 acres when two or more of such locations may be entered by the same locators when they adjoin and virtually constitute one body, tract, or area greatly in excess of the amount limited to a single location? The answer probably is that a limitation must be made [24] somewhere, otherwise one locator could locate the whole country, and it was probably placed at 160 acres as being a reasonable area to be included in one location, the presumption being that the additional expense of locating, surveying, and other expenses attendant upon holding and patenting the ground will operate as a check on excessive locating or patenting by one individual or association.

In a recent case in the U. S. District Court for the Western District of Washington, Shenk vs. Aumiller (217 Fed. Rep. 969), the court says:

7 .elnolse.g-tf-.sagf atfcolsil;s t :!


N. 40 Chains
(2640 Feet)
Cor No 3
(2640 Feet)
E. 40 chains
Cor No 4
S. 40 Chains
(2640 Feet)
No. 1
UNITED STATES SURVEY
No 242
160 A.

31 "Reference to the act of August 30, 1890, shows that Congress excluded from entry or settlement 'under any of the land laws * * * more than 320 acres in the aggregate under all of said laws.' This includes every classification. In the construction subsequently placed upon this act Congress referred to only two classifications of land: (a) Agricultural lands; and (b) mineral lands. The primary and general rule of statutory construction is that the intent of the lawmaker must be ascertained, when the language employed is involved and the intent not clearly expressed. The purpose for which the act under consideration is enacted being a matter of first importance in arriving at the solution of the question presented. I think it is proper for the court to consider that the conditions of the United States with relation to increase of population were greatly changed in 1890 from the conditions existing at the dates of the enactment of the various public land lands, and that the spirit of the administration of the public land laws was to benefit the many and not the few. It is common knowledge that in 1890 the public land area open to settlement was becoming very limited. It appears that Congress adopted a new policy by limiting the number of acres to be entered by a person 'under any of the land laws' and 'under all of the laws.'"

Reasoning from like considerations in this case it may be said that conditions in Alaska are very dissimilar from what they are in the States of the Union, and that the Congress of the United States recognized this by fixing 320 acres as the amount which could be taken in a homestead in Alaska. There is little or no danger of monopolization of the nonmineral lands of Alaska by an excessive number of entries being made by one locator. There was one such tendency in the matter of locating mining claims, which was sought to be checked by the act of August 1, 1912, above referred to. The only likelihood of any monopoly is along the shore line of navigable waters and this is sufficiently guarded against by the provisions in said [25] act of March 3, 1903, reserving eighty acres along the shore of navigable waters between entries made under such acts.

I do not see where there is any fraud on the part of the defendant in entering the two said separate tracts of land under said acts, even though the same adjoined each other, and the demurrer will have to be sustained.

Done at Valdez, Alaska, this 23d day of March, 1915.

FRED M. BROWN,
District Judge.

Entered court journal No. 9, page No. 30.
Filed in the District Court, Territory of Alaska, Third Division.
Mar. 23, 1915. Arthur Lang, clerk. By Chas A. Hand, deputy.

35 In the District Court for the Territory of Alaska, Division Number Three.

UNITED STATES OF AMERICA, PLAINTIFFS,
vs.
WILLIAM B. POLAND AND FREDERICK WILLIAM LOW, DEFENDANTS.

Application and motion for leave to file affidavits showing value of subject matter in controversy.

Comes now the plaintiffs and make application to the court for leave to file the affidavits of J. H. Romig, Edmund Rudolph, and F. B. Wood, showing the amount involved and the value of the subject matter in controversy in the above-entitled cause, which affidavits are tendered herewith.

WILLIAM N. SPENCE,
United States Attorney.

Due service of the foregoing motion and application hereby acknowledged in Seward, Territory of Alaska, third judicial division, by receiving a true copy thereof certified as such by William A. Munly, assistant United States attorney.

This 13th day of April, 1915.

S. O. MORFORD,
Attorney for Defendants.

36 (Endorsed:) Filed in the District Court, Territory of Alaska, third division, Apr. 15, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy. [28]

In the District Court for the Territory of Alaska, Third Division.

UNITED STATES OF AMERICA, PLAINTIFFS,
vs.
WILLIAM B. POLAND AND FREDERICK WILLIAM LOW, DEFENDANTS.
No. 593.

Order allowing filing of affidavits showing value of subject matter in controversy.

This matter coming on for a hearing upon the motion and application for leave to file the affidavits of J. H. Romig, F. B. Wood, and Edmund Rudolph, showing the amount involved and the value of the subject matter in controversy in the above-entitled suit, the plaintiffs appearing by William N. Spence, United States attorney, and the defendants by S. O. Morford, attorney for said defendants, and after argument and the court being advised in the premises, said motion and application is allowed.

It is therefore ordered that the affidavits of said J. H. Romig, F. B. Wood, and Edmund Rudolph, showing the amount involved

and the value of the subject matter in controversy in the above-entitled suit be allowed to be filed herein, and the same are
37 hereby made a part of the record in the above-entitled suit.

Done in open court this tenth day of May, 1914.

FRED M. BROWN,
District Judge.

To which defendant excepts and exception is allowed.

FRED M. BROWN, *Judge.*

(Endorsed:) Filed in the District Court, Territory of Alaska, Third Division, May 10, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.

Entered Court Journal No. 9, page 118. [29]

[*Affidavit of Edmund Rudolph, re value of subject matter in controversy.*]

In the District Court for the Territory of Alaska, Division Number Three.

UNITED STATES OF AMERICA, PLAINTIFFS,
vs.
WILLIAM B. POLAND AND FREDERICK WILLIAM LOW, DEFENDANTS.

UNITED STATES OF AMERICA,
Territory of Alaska, Third Division, } *ss.*

I, Edmund Rudolph, being first duly sworn, depose and say: I am a resident of the town of Seward, in the Territory of Alaska; that I am acquainted with the value of the following-described
38 real property situate in the Territory of Alaska, in the Seward recording district, to wit:

Beginning at corner No. 1 near the north shore of Resurrection Bay, identical with corner No. 5, U. S. survey No. 241, an iron pipe three inches in diameter, marked S. 242, cor. No. 1; thence west 40 chains to corner No. 2, an iron pipe three inches in diameter, marked S. 242, cor. No. 2, thence north 40 chains to corner No. 3, an iron pipe three inches in diameter, marked S. 242, cor. No. 3; thence east 40 chains to corner No. 4, an iron pipe three inches in diameter marked S. 242, cor. No. 4; thence south 40 chains to corner No. 1, the place of beginning, containing one hundred and sixty acres, being the land embraced within United States survey No. 242, according to the official plat of said survey returned to the general land office by the Surveyor General.

That said property is the same property that is involved in the above-entitled suit brought by the United States against the defendants for the purpose of canceling a patent to said land. That said land is situate a short distance from said town of Seward, Alaska.

That the value of said land as above described and in controversy in said suit is five thousand dollars.

EDMUND RUDOLPH. [30]

39 Subscribed and sworn to before me this 3d day of April, 1915.

[SEAL.] WM. H. WHITTLESEY,
Notary Public for the Territory of Alaska.

My commission expires Nov. 30th, 1917.

UNITED STATES OF AMERICA,
Territory of Alaska, Third Judicial Division, ss:

I, William H. Whittlesey, being first duly sworn, depose and say: That I am a citizen of the United States, over the age of twenty-one years and qualified to be a witness in this case; that I did on the 6th day of April, 1915, at Seward, Alaska, serve the foregoing affidavit upon S. O. Morford, Esq., attorney for defendants herein, by delivering to and leaving with him, personally, a certified copy thereof.

WILLIAM H. WHITTLESEY.

Subscribed and sworn to before me this 6th day of April, 1915.

[SEAL.] CURTIS R. MORFORD,
Notary Public for Alaska.

My commission expires Oct. 8, 1915.

(Endorsed:) Filed in the District Court, Territory of Alaska, third division, Apr. 15, 1915. Arthur Lang, clerk. By T. P. Geraghty, deputy. [31]

40 [*Affidavit of F. B. Wood, re value of subject matter in controversy.*]

In the District Court for the Territory of Alaska, Division Number Three.

UNITED STATES OF AMERICA, PLAINTIFFS,

vs.

WILLIAM B. POLAND AND FREDERICK WILLIAM LOW, DEFENDANTS.

UNITED STATES OF AMERICA,
Territory of Alaska, Third Division, ss:

I, F. B. Wood, being first duly sworn, depose and say: I am a resident of the town of Seward, in the Territory of Alaska; that I am acquainted with the value of the following described real property situate in the Territory of Alaska, in the Seward recording district, to wit:

Beginning at corner No. 1 near the north shore of Resurrection Bay, identical with corner No. 5, U. S. Survey No. 241, an iron pipe

three inches in diameter, marked S. 242, cor. No. 1; thence west 40 chains to corner No. 2, an iron pipe three inches in diameter, marked S. 242, cor. No. 2; thence north 40 chains to corner No. 3, an iron pipe three inches in diameter, marked S. 242, cor. No. 3; thence east
41 chains to corner No. 4, an iron pipe hree inches in diameter marked S. 242, cor. No. 4; thence south 40 chains to corner No. 1, the place of beginning, containing one hundred and sixty acres, being the land embraced within United States Survey No. 242, according to the official plat of said survey returned to the General Land Office by the Surveyor General.

That said property is the same property that is involved in the above-entitled suit brought by the United States against the defendants for the purpose of canceling a patent to said land. That said land is situate a short distance from said town of Seward, Alaska.

That the value of said land as above described and in controversy in said suit is five thousand dollars.

F. B. Wood. [32]

Subscribed and sworn to before me this 3d day of April, 1915.

[SEAL.] Wm. H. Whittlesey,
Notary Public for Alaska.

My commission expires Nov. 30, 1917.

Due service of the foregoing affidavit is hereby acknowledged in Seward, Territory of Alaska, Third Division, by receiving a copy thereof, certified as such by William H. Whittlesey, Assistant United States Attorney.

This — day of April, 1915.

———,
Attorney for Defendants.

42 United States of America, *Territory of Alaska, Third Judicial Division, ss:*

I, William H. Whittlesey, being first duly sworn, depose and say: That I am a citizen of the United States, over the age of twenty-one years and qualified to be a witness in this case; that I did on the 6th day of April, 1915, at Seward, Alaska, serve the foregoing affidavit upon S. O. Morford, Esq., attorney for defendants herein, by delivering to and leaving with him, personally, a certified copy thereof.

William H. Whittlesey.

Subscribed and sworn to before me this 6th day of April, 1915.

[SEAL.] Curtis R. Morford,
Notary Public for Alaska.

My commission expires Oct. 9, 1915.

(Endorsed:) Filed in the District Court, Territory of Alaska, Third Division, Apr. 15, 1915. Arthur Lang, clerk. By T. P. Geraghty, deputy. [33]

43 [*Affidavit of J. H. Romig, re value of subject matter in controversy.*]

In the District Court for the Territory of Alaska, division number three.

UNITED STATES OF AMERICA, PLAINTIFFS,
vs.
WILLIAM B. POLAND AND FREDERICK WILLIAM LOW, DEFENDANTS.

UNITED STATES OF AMERICA,
Territory of Alaska,
Third Division, } *ss:*

I, J. H. Romig, being first duly sworn, depose and say: I am a resident of the town of Seward, in the Territory of Alaska; that I am acquainted with the value of the following-described real property situate in the Territory of Alaska, in the Seward recording district, to wit:

Beginning at corner No. 1 near the north shore of Resurrection Bay, identical with corner No. 5, U. S. survey No. 241, an iron pipe three inches in diameter, marked S. 242, cor. No. 1; thence west 40 chains to corner No. 2, an iron pipe three inches in diameter, marked S. 242, cor. No. 2; thence north 40 chains to corner No. 3, an iron pipe three inches in diameter, marked S. 242, cor. No. 3; thence east
44 40 chains to corner No. 4, an iron pipe three inches in diameter marked S. 242, cor. No. 4; thence south 40 chains to corner No. 1, the place of beginning, containing one hundred and sixty acres, being the land embraced within United States survey No. 242, according to the official plat of said survey returned to the General Land Office by the surveyor general.

That said property is the same property that is involved in the above-entitled suit brought by the United States against the defendants for the purpose of canceling a patent to said land. That said land is situate a short distance from said town of Seward, Alaska.

That the value of said land as above described and in controversy in said suit is three thousand and 00/100 dollars.

J. H. ROMIG. [34]

Subscribed and sworn to before me this 3d day of April, 1915.

[SEAL.] WM. H. WHITTLESEY,
Notary Public for the Territory of Alaska.

My commission expires Nov. 30, 1917.

UNITED STATES OF AMERICA,
Territory of Alaska,
Third Judicial Division, } *ss:*

I, William H. Whittlesey, being first duly sworn, depose and say: That I am a citizen of the United States, over the age of twenty-one years and qualified to be a witness in this case; that I did on the 6th day of April, 1915, at Seward, Alaska, serve the foregoing

affidavit upon S. O. Morford, Esq., attorney for defendants herein, by delivering to and leaving with him, personally, a certified copy thereof. [35]

WILLIAM H. WHITTLESEY.

Subscribed and sworn to before me this 6th day of April, 1915.

CURTIS R. MORFORD.
Notary Public for Alaska.

My commission expires Oct. 9, 1915.

(Endorsed:) Filed in the District Court, Territory of Alaska, Third Division, Apr. 15, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.

[*Order of dismissal.*]

In the District Court for the Territory of Alaska, Third Division.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
WILLIAM B. POLAND AND FREDERICK WILLIAM LOW, DEFENDANTS. } No. 593.

Order on demurrer.

This cause coming on regularly to be heard upon demurrer of defendant to plaintiff's complaint, on the 23d day of March, 1915, plaintiff being represented by William N. Spence and Guy Brubecker, United States attorneys, and defendant being represented by S. O. Morford, Esq., and the court having heard the arguments [36] of respective counsel, and being fully advised in the premises, rendered its decision in writing, sustaining defendant's demurrer to plaintiff's complaint in all points therein, and the plaintiff declining to plead further.

It is hereby ordered, adjudged, and decreed, that plaintiff's action be and hereby is dismissed.

FRED M. BROWN.
District Judge.

(Endorsed:) Filed in the District Court, Territory of Alaska, Third Division, May 29, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.

Entered in Court Journal No. 9, page No. 155.

In the District Court for the Territory of Alaska, Third Division.

UNITED STATES OF AMERICA, PLAINTIFFS,
vs.
WILLIAM B. POLAND AND FREDERICK WILLIAM LOW, DEFENDANTS. } No. 593.

Amended decree.

This cause coming on to be heard upon motion of the defendants to amend the decree heretofore entered herein, on the 29 day of May, 1915, by dismissing the complaint and complaint as amended and the plaintiffs' action as to both of said defendants, and it ap-

47 pearing to the court that in the decree heretofore entered herein as aforesaid, said decree applied to defendant instead of defendants, and it appearing that said error was made through inadvertence and mistake said motion to amend said decree is allowed:

It is therefore ordered, adjudged, and decreed that the demurrer of the defendants and of each of said defendants to the plaintiffs' amended complaint be, and the same is hereby, sustained, and the plaintiffs' complaint and amended complaint and the plaintiffs' said action be, and the same are hereby, dismissed.

Done in open court this 21st day of June, 1915.

FRED M. BROWN, *District Judge.*

Filed in the District Court, Territory of Alaska, Third Division, June 21, 1915. Arthur Lang, clerk. By T. P. Geraghty, deputy.

Entered court journal No. 9, page No. 166. [37]

In the District Court for the Territory of Alaska, Third Division.

UNITED STATES OF AMERICA, PLAINTIFFS, vs. WILLIAM B. POLAND AND FREDERICK WILLIAM LOW, DEFENDANTS.	No. 393.

48 *Petition for appeal.*

To the honorable the judge of the above-entitled court:

The above-named plaintiffs, the United States of America, by and through William N. Spence, United States attorney for the Third Division of the District of Alaska, acting under and by the direction of the Attorney General of the United States of America, conceiving themselves aggrieved by the order and decree made and entered in the above-named cause, on the 29 day of May, 1915, which order and decree was amended by the above-entitled court on the 21 day of June, 1915, wherein and whereby it was ordered, adjudged, and decreed that the demurrers of the defendants and each of them to the amended complaint of the plaintiffs be sustained and that said plaintiffs' complaint, amended complaint, and action be, and were, dismissed, do hereby appeal from the said order and decree and amended decree to the United States Circuit Court of Appeals for the Ninth Circuit for the reasons specified in the assignment of errors filed herein, and said plaintiffs pray that this appeal be allowed and that a transcript of the record, papers, and proceedings upon which the said order and decrees were made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

WILLIAM N. SPENCE,
United States Attorney.

Dated this 22d day of June, 1915.

49 (Endorsed:) Filed in the District Court, Territory of Alaska, Third Division. June 2, 1915. Arthur Lang, clerk. By T. P. Geraghty, deputy. [38]

In the District Court for the Territory of Alaska, Third Division.

UNITED STATES OF AMERICA, PLAINTIFFS,
vs.
WILLIAM B. POLAND AND FREDERICK WILLIAM LOW, DEFENDANTS. } No. 593.

Order allowing appeal.

Now, on this day come the plaintiffs, the United States of America, by William X. Spence, United States attorney for the above-entitled district, acting under and by the direction of the Attorney General of the United States of America, and present to the court its petition praying for an order allowing an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from an order and decree of the above-entitled court made and entered herein on the 29 day of May, 1915, which order and decree was amended by the above-entitled court on June 21, 1915, ordering and decreeing that the demurrers of the defendants and the demurrer of each of said defendants to the amended complaint of the plaintiffs filed herein be sustained and that the complaint, amended complaint, and
50 action of the plaintiffs be dismissed and said plaintiffs also present a bond on said appeal with sufficient sureties in the sum of one thousand dollars ($1,000).

Whereupon it is ordered that the prayer of said petition be granted and that said plaintiffs, the United States of America, be, and they are hereby, allowed to take the appeal prayed for in said petition and that said bond presented by said plaintiffs be, and the same is hereby, approved.

Done in open court this 22d day of June, 1915.

FRED M. BROWN,
Judge of the above-entitled court.

(Endorsed:) Filed in the District Court, Ter. of Alaska, Third Div. June 22, 1915. Arthur Lang, clerk. By T. P. Geraghty, deputy.

(Endorsed:) Entered court journal No. 9, page 170. [39]

In the District Court for the Territory of Alaska, Third Division.

UNITED STATES OF AMERICA, PLAINTIFFS,
vs.
WILLIAM B. POLAND AND FREDERICK WILLIAM LOW, DEFENDANTS. } No. 593.

Assignment of errors.

Come now on this — day of June, 1915, the plaintiffs in the above-entitled cause and file the following assignment of errors
51 which they will rely upon their appeal from the order and

decree made by this honorable court on the 29 day of May, 1915, which order and decree was amended on the 21 day of June, 1915, in the above-entitled cause.

I.

The court erred in sustaining the demurrers of the defendants and the demurrer of each of said defendants to the plaintiffs' amended complaint.

II.

The court erred in not overruling the said demurrers of the defendants and the demurrer of each of said defendants to said amended complaint of plaintiff.

III.

The court erred in sustaining the demurrers of the defendants and the demurrer of each of said defendants to the complaint of the plaintiffs as amended.

IV.

The court erred in not overruling said demurrers of the defendants and the demurrer of each of said defendants to the plaintiffs' complaint as amended. [40]

V.

The court erred in entering the decree and amended decree herein sustaining said demurrers of the defendants and the demurrer of each of said defendants to said amended complaint of the plaintiffs, and dismissing the action of the plaintiffs herein.

VI.

The court erred in not overruling said demurrers of the defendants and the demurrer of each of said defendants to said amended
52 complaint of the plaintiffs and in not requiring said defendants and each of them to answer said complaint as amended.

Wherefore, said plaintiffs pray the court that said order and decree of the above-entitled court and said order and decree as amended as aforesaid may be reversed and that said court may be directed to enter a decree as set forth in the amended complaint of the plaintiffs.

WILLIAM X. SPENCE,
United States Attorney.

(Endorsed:) Filed in the District Court, Territory of Alaska, Third Division. June 22, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy. [41]

In the District Court for the Territory of Alaska, Third Division.

UNITED STATES OF AMERICA, PLAINTIFFS,
vs.
WILLIAM B. POLAND AND FREDERICK WILLIAM LOW, DEFENDANTS. } No. 593.

Bond on appeal.

KNOW all men by these presents that we, the United States of America, by and through William X. Spence, United States attorney for the Territory of Alaska, Third Division, under the authority and by the direction of the Attorney General of the United
53 States, as principal and Albert E. Grigsby and M. F. Hendrickson, of Valdez, Alaska, are held and firmly bound unto William B. Poland and Frederick William Low in the sum of one thousand dollars ($1,000) to be paid to said William B. Poland and Frederick William Low, their attorneys, executors, or administrators. To which payment, well and truly to be made, we bind ourselves, jointly and severally, our executors and administrators, firmly by these presents.

Sealed with our seals and dated this 22 day of June, 1915.

Whereas the above-named United States of America have appealed to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the decree and amended decree in the above-entitled cause entered and rendered in the above-entitled action by the District Court for the Territory of Alaska, Third Division, made and entered on the 29 day of May, 1915, amended by decree and order entered on 21 day of June, 1915.

Now, therefore, the condition of this obligation is such that if the above-named United States of America shall prosecute said appeal to effect and answer all costs and damages if said United States of America shall fail to make good said appeal, then [42] this obligation shall be void; otherwise the same shall be and remain in full force, virtue, and effect. In testimony whereof said United States of America has caused *this* presents to be signed by William X. Spence, United States Attorney for the Territory of Alaska, Third Division, acting under the authority and by the direction of
54 the Attorney General of the United States, and the said Albert B. Grigsby and M. F. Hendrickson have signed and sealed these presents the day and year above written.

UNITED STATES OF AMERICA,
By WILLIAM X. SPENCE,
United States Attorney.
ALBERT E. GRIGSBY. [SEAL.]
M. F. HENDRICKSON. [SEAL.]

UNITED STATES OF AMERICA,
Territory of Alaska, Third Division, } ss.

I, Albert E. Grigsby and M. F. Hendrickson, being each severally and duly sworn, depose and say: That I am one of the sureties in the

foregoing bond, that I am a resident and freeholder within said District: that I am worth in property therein over the sum of two thousand dollars ($2,000), over and above all my just debts and liabilities, exclusive of property exempt from execution: that I am not a counsellor, attorney, marshal, clerk, or other officer of any court.

ALBERT E. GRIGSBY.
M. F. HENDRICKSON.

Subscribed and sworn to before me this 22d day of June, 1915.

[SEAL.] T. P. GERAGHTY.
Deputy Clerk of Court, Ter. of Alaska, Third Division.

(Endorsed:) Filed in the District Court, Territory of Alaska, Third Division. June 22, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy. [43]

55 In the District Court for the Territory of Alaska, Third Division.

UNITED STATES OF AMERICA, PLAINTIFFS,
vs.
WILLIAM B. POLAND AND FREDERICK WILLIAM LOW, defendants. } No. 593.

Citation on appeal [copy].

To William B. Poland and Frederick William Low, defendants above named, and each of them, greeting:

Whereas United States of America, plaintiffs above named, have lately appealed to the United States Circuit Court of Appeals for the Ninth Circuit from an order and decree rendered in the District Court for the Territory of Alaska, Third Division, which order and decree was entered in the above-entitled court on May 29, 1915, and which decree was amended therein on June 21, 1915, in your favor, and have given the security required by law: you are therefore hereby cited and admonished to be and appear before said United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, to show cause, if any there be, why the said decree should not be corrected and speedy justice should not be done to the parties in that behalf.

56 Given under my hand at Valdez, in said district, this 22d day of June, in the year of our Lord one thousand nine hundred and fifteen.

FRED M. BROWN.
Judge of the Above-entitled Court.

(Endorsed:) Filed in the District Court, Territory of Alaska, Third Division. June 22d, 1915. Arthur Lang, clerk. By T. P. Geraghty, deputy.

Entered Court Journal No. 9, page No. 171. [44]

UNITED STATES OF AMERICA,
Territory of Alaska, Third Division, ss:

I hereby certify and return that I served the annexed citation on appeal on S. O. Morford, attorney of record, for the within-named defendants William B. Poland and Frederick Wm. Low, by handing to and leaving a true and correct copy thereof with him personally, at Seward, in said district for said division, on the 25th day of June, in the year of our Lord one thousand nine hundred and fifteen.

F. R. BRENNEMAN,
United States Marshal.
By ISAAC EVANS,
Deputy U. S. Marshal.

(Endorsed:) Filed in the District Court, Territory of Alaska, Third Division. June 28, 1915. Arthur Lang, clerk. [45]

57 In the District Court for the Territory of Alaska, Third Division.

UNITED STATES OF AMERICA, PLAINTIFFS,
vs.
WILLIAM B. POLAND AND FREDERICK WILLIAM LOW, defendants. } No. 593.

Order extending time to file record.

Now, at this day, for good cause shown to the above-entitled court, it is ordered that the time for filing the transcript of record, proceedings, and papers in the above-entitled cause in the United States Circuit Court of Appeals for the Ninth Circuit be, and the same is hereby, extended until 31st day of July, 1915.

Done in open court this 24th day of June, 1915.

FRED M. BROWN,
Judge of the Above-entitled Court.

(Endorsed:) Filed in the District Court, Territory of Alaska, Third Division. June 24, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.

Entered Court Journal No. 9, page No. 175. [46]

58 In the District Court for the Territory of Alaska, Third Division.

UNITED STATES OF AMERICA, PLAINTIFFS,
vs.
WILLIAM B. POLAND AND FREDERICK WILLIAM LOW, defendants. } No. 593.

Acknowledgment of service of papers on appeal.

I, S. O. Morford, attorney of record for the defendants in the above-entitled cause, hereby acknowledge service in the matter of

appeal in the above-entitled cause and court on 28th day of June, 1915, at Valdez, Alaska, in the above-entitled district, by receiving copies of the original files and records as follows, to wit:

Petition for appeal.
Order allowing appeal.
Assignment of errors.
Bond for cost on appeal.
Citation.
Order extending time to file records and papers in said appeal.
Stipulation as to papers, documents, and records to be sent to the United States Circuit Court of Appeals for the Ninth Circuit.
Praecipe.

S. O. Morford,
Attorney for Above-named Defendants.

59 Filed in the District Court, Territory of Alaska, Third Division. June 28, 1915. Arthur Lang, Clerk. By ——, Deputy. [47]

In the District Court for the Territory of Alaska, Third Division.

United States of America, plaintiffs, vs. William B. Poland and Frederick William Low, defendants.	No. 593.

Stipulation as to papers, documents, and records to be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

It is hereby stipulated by and between the plaintiffs, United States of America, by plaintiffs' attorneys, William N. Spence, United States Attorney, and William A. Muny, Assistant United States attorney, and the defendants, by their attorney, S. O. Morford, that the transcript of the record on appeal of the above-entitled cause shall include the following papers and documents:

Application for leave to file amended complaint by plaintiffs.
Order granting leave to file amended complaint.
Amended complaint.
Demurrer of the defendants to the amended complaint.
60 Demurrer of the defendant, Frederick William Low.
Demurrer of the defendant, William B. Poland.
Courts decision sustaining demurrers.
Blue print showing location of land in controversy.
Application and motion for leave to file affidavits showing value of subject matter in controversy.
Order allowing filing of affidavits showing value of subject matter in controversy.
Affidavits of Edmund Rudolph, F. B. Wood, and J. H. Romig, showing value of subject matter in controversy.

Order and decree on demurrer sustaining demurrers of [48] *of* defendants and dismissing plaintiffs' action.

Amended decree sustaining demurrers of the defendants and each of them and dismissing plaintiffs' complaint, amended complaint, and action.

Petition of plaintiffs for appeal.

Order allowing appeal.

Assignment of errors.

Bond on appeal with justification thereon.

Citation on appeal with return and acknowledgment of service.

Order extending time to file appeal in Circuit Court of Appeals.

Acknowledgment of service of all the different papers as set forth in said acknowledgment.

61 Stipulation as to papers, to be sent to the Circuit Court of Appeals for the Ninth Circuit.

Praecipe.

And the clerk of the above-entitled court is hereby authorized to eliminate from the said record on appeal all the other matters in said record.

UNITED STATES OF AMERICA.
By WILLIAM N. SPENCE,
United States Attorney.
WILLIAM A. MUNLY,
Assistant U. S. Attorney.
S. O. MOREFORD,
Attorney for Defendants.

Filed in the District Court, Territory of Alaska, Third Division. Jun. 28, 1915. Arthur Lang, Clerk. By ———, Deputy.

Dated this 28th day of June, 1915. [49]

In the District Court for the Territory of Alaska, Third Division.

UNITED STATES OF AMERICA, PLAINTIFFS,
vs.
WILLIAM B. POLAND AND FREDERICK WILLIAM LOW, defendants. } No. 593.

Praecipe for transcript of record.

To the clerk of the above-entitled court:

62 You will please make, certify, and transmit forthwith to the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, a copy of the record in the above-entitled cause, as a return to the appeal heretofore taken and granted by the plaintiffs, the United States of America, to review the decree and amended decree in the above-entitled cause, which record shall consist of the following files and records, to wit:

Application for leave to file amended complaint by the plaintiffs.

Order granting leave to file amended complaint.

Amended complaint.

Demurrer of the defendants to the amended complaint.
Demurrer of the defendant Frederick William Low.
Demurrer of the defendant William B. Poland.
Court's decision sustaining demurrers.
Blue-print showing location of land in controversy.
Application and motion for leave to file affidavits showing value of subject matter in controversy.
Order allowing filing of affidavits showing value of subject matter in controversy. [50]
Affidavits of Edmund Rudolph, F. B. Wood, and J. H. Romig, showing value of subject matter in controversy.
Order and decree on demurrer sustaining demurrers of defendants and dismissing plaintiff's action.
63 Amended decree sustaining demurrers of the defendants and each of them and dismissing plaintiff's complaint, amended complaint, and action.
Petition of plaintiffs for appeal.
Order allowing appeal.
Assignment of errors.
Bond on appeal, with justification thereon.
Citation on appeal with return and acknowledgment of service.
Order extending time to file appeal in Circuit Court of Appeals.
Acknowledgment of service of all the different papers as set forth in said acknowledgment.
Stipulation as to papers, to be sent to the Circuit Court of Appeals for the Ninth Circuit.
This praecipe.

WILLIAM N. SPENCE,
United States Attorney.

Filed in the District Court, Territory of Alaska, Third Division. Jun. 28, ——. Arthur Lang, Clerk. By ———, Deputy. [51]

In the District Court for the Territory of Alaska, Third Division.

Certificate of clerk U. S. District Court to transcript of record.

UNITED STATES OF AMERICA, }
Territory of Alaska, Third Division. } ss.

64 I, Arthur Lang, clerk of the District Court for the Territory of Alaska, Third Division, do hereby certify that the above and foregoing, and hereto annexed 51 pages, numbered from 1 to 51, inclusive, are a full, true, and correct transcript of records and files of the proceedings in the above-entitled cause, as the same appears on the records and files in my office; that this transcript is made in accordance with the plaintiff's praecipe on file herein. I further certify that the foregoing transcript has been prepared, examined, and certified to by me on behalf of the plaintiff and plaintiff in error, the United States of America.

In witness whereof, I have hereunto set my hand and affixed the seal of this court at Valdez, Alaska, this 28th day of June, A. D. 1915.

[SEAL.]

ARTHUR LANG
Clerk of the District Court,
Territory of Alaska, Third Division. [52]

(Endorsed:) No. 2621. United States Circuit Court of Appeals for the Ninth Circuit. The United States of America, appellant, vs. William B. Poland and Frederick William Low, appellees. Transcript of record. Upon appeal from the United States District Court for the District of Alaska, Division No. 3.

Filed July 7, 1915.

F. D. MONCKTON,
Clerk of the United States Circuit Court of
Appeals for the Ninth Circuit.
By MEREDITH SAWYER,
Deputy Clerk.

(Endorsed:) Printed transcript of record. Filed Aug. 2, 1915. F. D. Monckton, clerk.

65 United States Circuit Court of Appeals for the Ninth Circuit.

THE UNITED STATES OF AMERICA, APPELLANT,
vs.
WILLIAM B. POLAND AND FREDERICK WILLIAM LOW, appellees. } No. 2621.

Upon appeal from the United States District Court for the District of Alaska, Division No. 3.

Proceedings had in the United States Circuit Court of Appeals for the Ninth Circuit.

66 At a stated term, to wit, the October term A. D. 1915, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the court room thereof, in the city and county of San Francisco, in the State of California, on Wednesday, the twentieth day of October, in the year of our lord one thousand nine hundred and fifteen.

Present: Honorable William B. Gilbert, senior circuit judge, presiding; Honorable William W. Morrow, circuit judge; Honorable Frank H. Rudkin, district judge.

THE UNITED STATES OF AMERICA, APPELLANT,
vs.
WILLIAM B. POLAND AND FREDERICK WILLIAM LOW, appellees. } No. 2621.

Order of submission.

Ordered, appeal in the above-entitled cause argued by Mr. Assistant United States William A. Munly, counsel for the appellant, and

by Mr. Ira Bronson, counsel for the appellees, and submitted to the court for consideration and decision.

67 At a stated term, to wit, the October term, A. D. 1915, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the court room thereof, in the city and County of San Francisco, in the State of California, on Monday, the twenty-seventh day of March, in the year of our Lord one thousand, nine hundred and sixteen.

Present: Honorable William B. Gilbert, senior circuit judge, presiding; Honorable Erskine M. Ross, circuit judge; Honorable William W. Morrow, circuit judge.

THE UNITED STATES OF AMERICA, APPELLANT,
vs.
WILLIAM B. POLAND AND FREDERICK WILLIAM LOW, appellees. } No. 2621.

Order directing filing of opinion and dissenting opinion and filing and recording of decree.

By direction of the Honorable William B. Gilbert and Erskine M. Ross, circuit judges, and the Honorable Frank H. Rudkin, district judge, before whom the cause was heard, ordered that the typewritten opinion this day rendered by this court in the above-entitled cause be forthwith filed by the clerk, and that a decree be filed and recorded in the minutes of this court in said cause in accordance with said opinion.

By direction of the Honorable Frank H. Rudkin, district judge, ordered that the dissenting opinion written by him, and this day rendered in said cause, be forthwith filed by the clerk.

68 In the United States Circuit Court of Appeals for the Ninth Circuit.

THE UNITED STATES OF AMERICA, APPELLANT,
vs.
WILLIAM B. POLAND AND FREDERICK WILLIAM LOW, appellees. } No. 2621.

Upon appeal from the United States District Court for the District of Alaska, Division No. 3.

Opinion of U. S. Circuit Court of Appeals.

Suit in equity by appellant (plaintiff in the court below) to cancel patent for certain lands, issued by the United States to William B. Poland, appellee; and to cancel deed from the latter to Frederick William Low, appellee, conveying the above-mentioned lands. Demurrer to complaint. Demurrer sustained and bill dismissed. Decree affirmed.

William N. Spence, United States attorney, and William A. Munly, assistant United States attorney, for the appellant.

S. O. Morford, Ira Bronson, J. S. Robinson, and H. B. Jones, for the appellees.

69 Before Gilbert and Morrow, Circuit Judges, and Rudkin, District Judge.

Morrow, Circuit Judge, delivered the opinion of the court:

The United States brought suit in the court below on a date not disclosed in the transcript of record; but an amended complaint was filed October 15, 1914. The object of the suit is to vacate, cancel, and declare null and void a patent of the United States for a tract of land of 160 acres, embraced in United States survey No. 242, in the Kenai recording precinct in the district of Alaska. The patent was issued to one William B. Poland on March 22, 1909, and seems to be regular on its face in every particular. The complaint also prays that a deed executed by Poland, dated May 25, 1909, conveying the land to Frederick William Low, be vacated, canceled, and declared null and void. The amended complaint was not filed until the statute of limitations of six years (section 8 of act of March 3, 1891; 26 Stat. 1095, 1099) had nearly run.

The defendant Poland entered the above-mentioned tract of land at the United States land office at Juneau, Alaska, on April 26, 1906, as the assignee of a certain soldier's additional homestead right, under the general homestead laws, and section 101 of the Compiled Laws of Alaska (act of March 3, 1903; 32 Stat. 1028).

On the same day Poland also made an entry at the land office at Juneau, as assignee of a soldier's additional homestead right, under the same acts of Congress as the previously described entry, of a

70 tract of land containing 159.75 acres, embraced in United States survey No. 241. All this appeared upon the face of the record and must have been known to the officers of the land department at the date of entries. Upon this survey and entry, a patent of the United States was issued to Poland on January 20, 1908. The tract of land described in survey No. 242 adjoins the tract of land described in survey No. 241 on the north.

In both the surveys and in the patents issued by the United States for these two tracts of land, their boundaries were described fully and accurately by monuments, courses, and distances. In survey No. 242, and in the patent issued upon that survey, the first call of the description is: "Beginning at corner No. 1 near the north shore of Resurrection Bay, identical with corner No. 5, U. S. Survey No. 241, an iron pipe three inches in diameter, marked S. 242, cor. No. 1." The description concludes with the rectal, "containing one hundred and sixty acres, being the land embraced within United States survey No. 242, according to the official plat of said survey returned to the General Land Office by the surveyor general." The two tracts are shown on the annexed plat. Nearly the entire length of the southern boundary of survey No. 241 follows the shore line of Resurrection Bay. Survey No. 242 does not touch Resurrection Bay or any other navigable water.

The vacation and cancellation of the patent dated March 22, 1909, issued upon survey No. 242, is sought upon the ground that the
71 patent was obtained in violation of section 101 of the Compiled Statute Laws of Alaska (act of March 3, 1903; 32 Stat. 1028), which provides that "no more than one hundred sixty acres shall be entered in any single body by such scrip, lieu selection, or soldier's additional homestead right," referring to the soldier's additional homestead right under which entries Nos. 241 and 242 were made by the defendant Poland.

It is also contended that the patent was obtained in violation of the further provision of the statute, "That no entry shall be allowed extending more than one hundred and sixty rods along the shore of any navigable water, and along such shore a space of at least eighty rods shall be reserved from entry between all such claims."

With respect to the first alleged violation of the statute, it is contended that, although the patent issued upon survey No. 242 embraces but 160 acres, the patent issued upon survey No. 241 embraces 159.75 acres, and that the two together constitute an entry of more than 160 acres in a single body. The defendant Poland did not by his soldier's additional homestead right enter more than 160 acres of land in a single body under survey No. 242. Did he enter more by making the additional entry of the adjoining tract of 159.75 acres under survey No. 241? Technically, he did not. They were two separate and distinct entries and two separate and distinct bodies of land under our system of land measurement. But did he violate the intent and purpose of the statute by making the additional entry when the two together would exceed 160 acres? We think not.
72 What the statute was seeking to protect was the shores of the navigable waters of Alaska, and not to prohibit the entry of a tract of land of more than 160 acres and not more than 320 acres elsewhere than along the shore.

This is plain from the provisions of the act relating to homesteads. Prior to this act the homestead right was limited in Alaska to 80 acres. (Section 1 of act of May 14, 1898; 30 Stat., 409.) This area was found insufficient for homestead purposes in that district, and by this act (of March 3, 1903; 32 Stat., 1028) it was expressly increased to 320 acres, subject to the limitation that no entry should extend more than one hundred and sixty rods along the shore of any navigable water. The term "single body" is not defined in the statute of March 3, 1903, nor by any previous statute; but it refers to acres of land, and must be held to refer to the bodies of acres of land dealt with in the statute. The statute deals with the entries of two bodies of land and qualifies them both; one of "one hundred and sixty rods along the shore of any navigable water"; and the other a homestead of "three hundred and twenty acres." With respect to the first body: One hundred and sixty rods is one side of a quarter section of land inclosing 160 acres; that is to say, under our system of land measurement it is the determining measurement of one of four equal sides of 160 acres. The statute adopts this measurement as the descriptive

limitation of 160 acres "along the shore of any navigable water." If on the other hand the body of land is elsewhere than along the shore of any navigable water, then the limitation of the entry is to an area of 320 acres under the other provision of the statute. It follows that the limitation as applied to these two bodies of land is in entire harmony with their location, and whichever location
73 we take, the entry or entries are within the limitations of the statute and not in conflict with it.

The next question is, was the entry by Poland as assignee of two soldiers' additional homestead rights in violation of the statute?

The statute of March 3, 1903, extended all the privileges of the homestead laws of the United States, not in conflict with the provisions of the act, and all rights incident thereto, to the District of Alaska, subject to such regulations as might be made by the Secretary of the Interior. It is further provided that no land scrip, nor land warrant of any kind whatsoever, should be located or exercised upon any lands in the said District, except as then provided by law.

The law at that time (act of May 14, 1898; 30 Stat., 409) extended to the District of Alaska the right to enter surveyed or unsurveyed lands under the provisions of the law relating to the acquisition of title through soldiers' additional homestead rights, but limited each entry under that act to 80 rods along the shore of any navigable water and reserved along such shore a space of at least 80 rods between all such claims. It also limited every homestead in the District to 80 acres in extent. The act of August 30, 1890 (26 Stat., 394) had provided that "No person who shall after the passage of this act, enter upon any of the public lands with a view to occupation, entry or settlement under any of the land laws shall be permitted to acquire title to more than three hundred and twenty acres
in the aggregate, under all of said laws." In Kielblaugh v.
74 Sinero (32 L. D. 418), the Secretary of the Interior had held that the limitation in this statute did not apply to an entry made by the assignee of a soldier's additional homestead right, and that such an entry might be made without reference to the assignee's entry of or claim to other lands under any statute whatever. This decision was referred to by the Assistant Secretary of the Interior in the case of William P. Wall (38 L. D. 566) as declaring the law upon that subject. In Webster v. Luther (163 U. S. 331), it was held that persons entitled under section 2304 of the Revised Statutes to enter a homestead who may have theretofore entered under the homestead laws a quantity of land less than 160 acres, and who had the right under section 2306 [soldiers' additional homestead right] to make an additional entry, may assign and transfer that right, and in the hands of an assignee it was without restriction as to quantity.

This was the state of the law at the time of the passage of the act of March 3, 1903, containing the provision, "that no more than one hundred and sixty acres shall be entered in any single body by such scrip, lieu selection, or soldier's additional homestead right."

This provision was not contained in the original bill, H. R. 129
as reported to the House on December 6, 1902 (Cong. Rec., 57
Cong., 2d sess., p. 81). That bill amended section 1 of the act of M
14, 1898, by striking out "eighty" in the last line thereof and inser
ing "three hundred and twenty," making the statute to read "th
no homestead shall exceed three hundred and twenty acres
75 This was all there was in the bill, and it passed the House
that form without any other change or amendment to the a
of May 14, 1898.

In the Senate, the House bill was amended in certain particula
among others an amendment taking out of the operation of the l
the right to commute a homestead entry and the right to enter s
veyed or unsurveyed lands under the provisions of the law relati
to the acquisition of title through soldiers' additional homeste
rights. There was also an amendment providing that no entry shou
be allowed extending more than 160 rods along the shore of a
navigable water. This latter amendment was to take the place
the provision in the act of May 14, 1898, providing that no ent
should be allowed extending more than eighty rods along the sho
of any navigable water.

The House provision, enlarging the homestead entry from eigh
acres to three hundred and twenty acres in extent, was retained in t
bill. The provision that "no more than one hundred and sixty ac
shall be entered in any single body by such scrip, lieu selection,
soldier's additional homestead right" was not added in the Senat
in other words, this provision was not in the bill when it was
turned to the House for concurrence.

In the House, the Senate amendments were nonconcurred in, a
a committee of conference was requested upon the disagreeing vo
of the two Houses. A committee of conference was appointed. T
provision was not in the bill when the bill was sent to conferen
The conference committee reached an agreement and so
76 ported to the two Houses. In this report appears for t
first time the provision, "that no more than 160 acres shall
entered in a single body."

It is a rule of parliamentary law that a committee of conferen
is not authorized to consider matters which had neither been inc
porated in Senate amendments nor brought before the House, unl
germane to something in the bill. (Hinds Parliamentary Pre
dents, sections 1414–1417.) It will be presumed that the conferen
report was in accordance with parliamentary law.

Mr. Lacey, chairman of the House conference committee, in
report to the House concerning the amendments, said: "This is wh
has been known as the Alaska homestead bill. The proposition is
give homesteads in that country to the extent of 320 acres. T
principal matter of difference between the House and the Senate c
ferees was upon the question of commutation and the use of scrip
Alaska. Upon the question of the use of scrip the agreement lea
these matters substantially as they are now, excepting to make t

N. 40 Chains (2640 Feet)

Cor. No. 4

Cor. No. 3

UNITED STATES SURVEY

No 242

160 A.

(2640 Feet)

E. 40 chains

Cor. No. 2

Cor. No. 1

S. 40 Chains (2640 Feet)

N

law clear that scrip shall not be located upon streams in such a way as to make a continuous location, but that a quarter of a mile between any two locations will be reserved. There can be no monopoly of the shores of the water courses. As to commutation, it provides that there may be commutation on a quarter section, but not on the whole amount of 320 acres."

In reply to questions propounded by members of the House, Mr. Lacey said: "Mr. Speaker, as the bill left the House it was
77 320 acres. As agreed on now it is 320 acres. As to commutation, the amount to be commuted is limited to 160 acres."

Mr. Stephens of Texas: "Mr. Speaker, the question I would like to ask is whether or not it changes the law with reference to settlements on these lands?"

Mr. Lacey: "Not at all. It leaves the law the same as it is in other parts of the United States."

(Congressional Record, 57th Cong., 2d sess., pp. 2859-60.)

This reference to the proceedings in Congress in the passage of the act of March 3, 1903, and the report of the conference committee is justified by similar references made by the Supreme Court in Holy Trinity Church v. United States, 143 U. S., 457, 464; Binns v. United States, 194 U. S., 486, 495; Oceanic Steam Navigation Co. v. Stranahan, 214 U. S., 320, 333; Northern Pacific v. Washington, 222 U. S., 370, 380; McLean v. United States, 226 U. S., 374, 380.

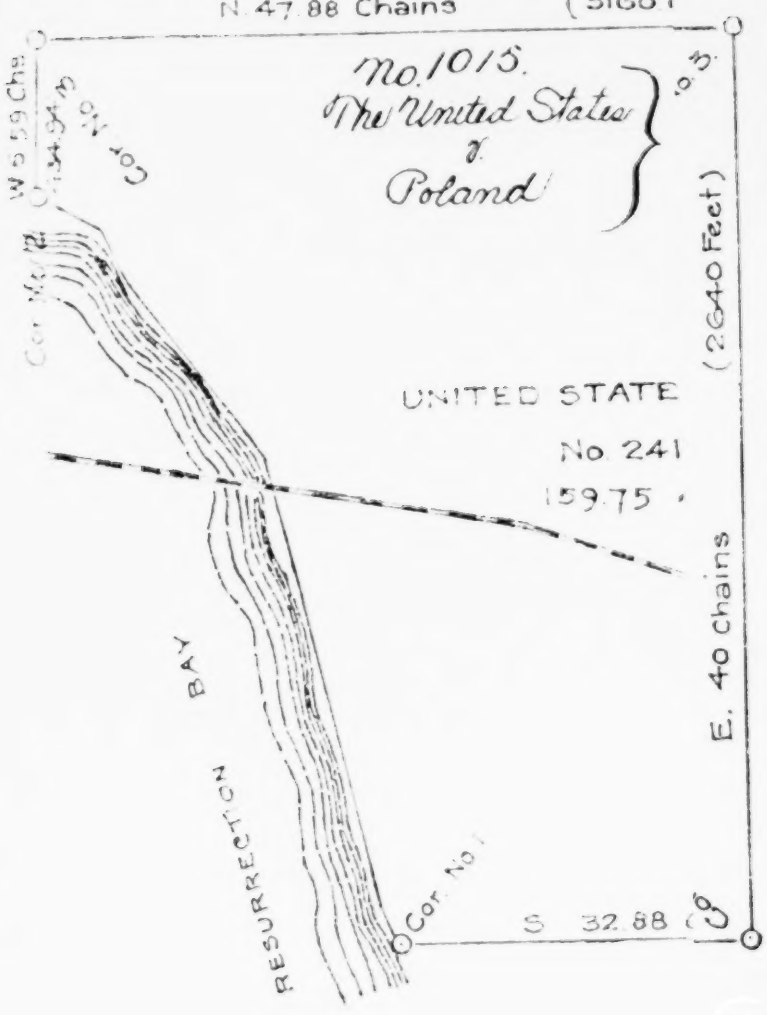
In the light of the report of the committee of conference, we must hold that the limitation that "no more than one hundred and sixty acres shall be entered in a single body" was germane to the Senate amendment that "no entry shall be allowed extending more than one hundred and sixty rods along the shore of any navigable water," and that it was so intended.

It is contended further that the act of May 14, 1898 (30 Stat., 409), provides in section 1 "That no entry shall be allowed extending more than eighty rods along the shore of any navigable water, and along such shore a space of at least eighty rods shall be reserved from entry between all such claims." Survey No. 242 does not extend
78 along the shore of any navigable water eighty rods, or any distance, or at all. It does not touch any navigable water, and what we have said concerning the first objection to the entry is applicable to this objection. The provision, that "along such shore a space of at least eighty rods shall be reserved from entry between all such claims," means plainly that a space of at least eighty rods shall be reserved from entry along the shore of the navigable water between claims along such shore. It cannot mean that there shall be reserved a space of eighty rods from any other entry, however situated; such construction would be obviously contrary to the intent and purpose of the statute and inadmissible. We are of the opinion that the complaint did not state a cause of action.

The decree of the court below is therefore affirmed.

(Endorsed:) Opinion. Filed Mar. 27, 1916. F. D. Monckton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit.

FILED in the District Court,
Territory of Alaska, Third Division.
MAR 24 1915
ARTHUR LANG, Clerk
Chas Wilcut Deputy



79 In the United States Circuit Court of Appeals for the Ninth Circuit.

UNITED STATES OF AMERICA, APPELLANT, *vs.* WILLIAM B. POLAND AND FREDERICK WILLIAM LOW, appellee.	No. 2621. Opinion.

Dissenting opinion of Rudkin, D. J.

William L. Spence, U. S. atty., and William A. Munly, ass't. U. S. atty., for appellant.

Ira Bronson, J. S. Robinson, and H. B. Jones for appellees.

Before Gilbert and Morrow, circuit judges, and Rudkin, district judge.

Rudkin, district judge: As will appear from the plat attached to the majority opinion the appellee, Poland, has entered and acquired title to approximately three hundred and twenty acres of land in the District of Alaska, in a single body, by soldier's additional homestead right. It occurs to me that this was a plain and palpable violation of the act of March 3, 1903 (32 Stat., 1028), extending the homestead laws of the United States to the District of Alaska and providing, among other things, that "no more than one hundred and sixty acres shall be entered in any single body by such scrip, lieu selection, or soldier's additional homestead right."

A brief reference to the legislative history of this right and to the decisions of the department thereunder will throw some light on the object of the proviso in question. Section 2304 of the Revised Statutes provides that every private soldier and officer who
80 served in the Army of the United States during the rebellion for ninety days, and who was honorably discharged, and has remained loyal to the Government, shall be entitled to enter and receive patents for a quantity of public lands not exceeding one hundred and sixty acres on certain terms and conditions not material here. Section 2306 provides:

"Every person entitled, under the provisions of section twenty-three hundred and four, to enter a homestead who may have heretofore entered, under the homestead laws, a quantity of land less than one hundred and sixty acres shall be permitted to enter so much land as, when added to the quantity previously entered, shall not exceed one hundred and sixty acres."

In Webster v. Luther (163 U. S., 331) it was held that this additional right was transferable without restriction.

In the case of Ole B. Olson (33 Land Dec., 225), it was held that the assignee of two or more soldiers' additional homestead rights may locate them as one right upon the same tract of land, provided they equal in the aggregate the amount of land so located.

In the case of Kiehlbauch v. Simero (32 Land Dec., 418) it was held that the quantity of land which an assignee of a soldier's addi-

tional right may enter is not restricted by the act of August 30, 1890 (26 Stat., 391), providing that—

"No person who shall, after the passage of this act, enter upon any of the public lands with a view to occupation, entry, or settlement under any of the land laws shall be permitted to acquire title to more than three hundred and twenty acres in the aggregate, under all of said laws, but this limitation shall not operate to curtail the right of any person who has heretofore made entry or settlement on the public lands or whose occupation, entry, or settlement is validated by this act."

84 Or by the act of March 3, 1891 (26 Stat., 1101), providing that the act of August 30, 1890, supra, "shall be construed to include in the maximum amount of lands the title to which is permitted to be acquired by one person only agricultural lands and not to include lands entered or sought to be entered under the mineral-land laws."

By letter of instructions from the Secretary of the Interior to the Commissioner of the General Land Office under date of June 29, 1905 (33 Land Dec., 606), the same view is again asserted.

The act of May 14, 1898, entitled "An act extending the homestead laws and providing for rights of way for railroads in the District of Alaska, and for other purposes" (30 Stat., 409), provides that:

"The homestead laws of the United States and the rights incident thereto, including the right to enter surveyed or unsurveyed lands under provisions of law relating to the acquisition of title through soldier's additional homestead rights, are hereby extended to the District of Alaska subject to such regulations as may be made by the Secretary of the Interior: and no indemnity, deficiency, or lieu lands pertaining to any land grant whatsoever originating outside of said District of Alaska shall be located within or taken from lands in said District: Provided, That no entry shall be allowed extending more than eighty rods along the shore of any navigable water, and along such shore a space of at least eighty rods shall be reserved from entry between all such claims, and that nothing herein contained shall be so construed as to authorize entries to be made, or title to be acquired, to the shore of any navigable waters within said District: And it is further provided, That no homestead shall exceed eighty acres in extent."

85 By letter of instructions from the Secretary of the Interior to the Commissioner of the General Land Office under date of December 4, 1902 (31 Land Dec., 442), it was declared that this proviso did not limit the number of entries that might be made by an assignee of several additional soldier's rights under section 2306 of the Revised Statutes. The letter in question reads as follows:

"This department is in receipt of your letter of November 21, 1902, requesting instructions as to whether or not the last proviso to section 1 of the act of May 14, 1898 (30 Stat., 409), places a limitation upon the right of the assignee of a soldier's additional right of

homestead entry under section 2306 of the Revised Statutes, so as to prevent the assignee of several of such additional rights from making several entries of eighty acres each thereunder of public lands in the district of Alaska.

"Said proviso is as follows: 'And it is further provided that no homestead shall exceed eighty acres in extent.'

"You express the opinion that the number of entries that may be made by an assignee is not limited by the terms of this proviso, and in this conclusion the department concurs. The limitation is placed upon the acreage that may be included in a single homestead entry, and can not apply to an assignee who in the exercise of the additional right does not seek to take in any one entry more than eighty acres."

These instructions were followed in a very few months by the act of March 3, 1903 (32 Stat., 1028), containing the proviso above quoted "that no more than one hundred and sixty acres shall be entered in any single body by such scrip, lieu selections, or soldier's additional homestead right."

From the foregoing it will be seen that prior to the passage
83 of the act of March 3, 1903, there was (a) no limitation on the quantity of land an assignee of soldier's additional homestead rights might acquire in the District of Alaska, and (b) no limitation on the quantity of land that might be embraced in a single application or location, provided the assigned rights equaled in the aggregate the quantity of land located upon. The appellee Poland made two applications for approximately three hundred and twenty acres of land in a single body on the same day, as assignee of four separate soldiers' additional homestead rights, and has received patents therefor. There is no reason why the four rights might not have been embraced in a single application or location, and had they been the violation of the statute would be too obvious to admit of question. The statutory prohibition is against acquiring more than one hundred and sixty acres in a single body by soldier's additional homestead right, not merely a prohibition against acquiring more than one hundred and sixty acres in a single application or under a single location. Could then, the appellee, by making two applications or locations instead of one, and by drawing an imaginary line between the two surveys, thwart the will of Congress and defeat its declared policy? The question suggests its own answer. I see no connection between the proviso that no more than one hundred and sixty acres of land shall be entered in any single body and the further proviso that no entry shall be allowed extending more than one hundred and sixty rods along the shore of any navigable water. The former proviso is complete in itself and speaks for itself. It first appeared in the amendment of 1903 and was intended to accomplish some purpose. How it got there is not material. Suffice it to say it is the law of the land. The purpose of the amendment, however, is dis-
84 closed in the legislative history of the act set forth in the majority opinion. The Senate favored the abrogation of the additional homestead right entirely in the District of Alaska, but as

a matter of compromise, no doubt, the right was retained, limited, however, to the right to acquire one hundred and sixty acres in any single body. As already stated, if this legislation only compels the assignee of such rights to so marshal them that not more than one hundred and sixty acres will be included in a single application or entry the act accomplishes no useful purpose. The manifest object was to prohibit the acquisition of large bodies of land in the District of Alaska under soldiers' additional homestead rights, and if the majority opinion prevails that object can readily be defeated. I am also of opinion that the affidavit to the effect that survey No. 242 " is more than eighty rods distant from any other survey or entry under the provisions of said act of May 14, 1898," was false whether intentionally so or not; but if not false the second patent issued through a manifest mistake which is equally within the corrective power of a court of equity. The decree should be reversed.

(Endorsed:) Dissenting opinion. Filed Mar. 27, 1916. F. D. Monckton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit.

85 United States Circuit Court of Appeals for the Ninth Circuit.

THE UNITED STATES OF AMERICA, APPELLANT.
vs.
WILLIAM B. POLLAND AND FREDERICK WILLIAM LOW, appellees. } No. 2621.

Decree, U. S. Circuit Court of Appeals.

Appeal from the District Court of the United States for the District of Alaska, Division No. 3.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Alaska, Division No. 3, and was duly submitted.

On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the decree of the said district court in this cause be, and hereby is, affirmed.

[Endorsed:] Decree. Filed and entered March 27, 1916. F. D. Monckton, clerk.

86 United States Circuit Court of Appeals for the Ninth Circuit.

THE UNITED STATES OF AMERICA, APPELLANT.
vs.
WILLIAM B. POLLAND AND FREDERICK WILLIAM LOW, appellees. } No. 2621.

Certificate of clerk, U. S. Circuit Court of Appeals to record certified under section 3 of Rule 31 of the Supreme Court of the United States.

I, Frank D. Monckton, as clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing

eighty-five (85) pages, numbered from and including 1 to and including 85, to be a true copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made and certified under section 3 of Rule 37 of the Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the city of San Francisco, in the State of California, this twenty-seventh day of December, A. D. 1916.

[SEAL.] F. D. MONCKTON,
Clerk.
By PAUL P. O'BRIEN,
Deputy Clerk.

87 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, greeting:

Being informed that there is now pending before you a suit in which the United States of America is appellant, and William B. Poland and Frederick William Low are appellees, No. 2621, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the District Court of the United States for the District of Alaska, Division No. 3, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and
88 removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the twenty-sixth day of April, in the year of our Lord one thousand nine hundred and seventeen.

[SEAL.] JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

89 (Indorsed:) File No. 25,845. Supreme Court of the United States. No. 1015, October term, 1916. The United States vs. William B. Poland et al. Writ of certiorari.

Docketed, No. 2621. United States Circuit Court of Appeals for the Ninth Circuit. The United States of America vs. William B. Poland et al. Writ of certiorari from Supreme Court of the United States. Filed May 2, 1917. F. D. Monckton, clerk U. S. Circuit Court of Appeals for the Ninth Circuit.

90 In the Supreme Court of the United States, October term, 1916.

THE UNITED STATES, PETITIONER,
vs.
WM. B. POLAND & FRED. WM. LOW. } No. 1015.

Stipulation as to return to writ of certiorari.

It is hereby stipulated by counsel for the parties to the above-entitled cause that the certified transcript of the record herein, now on file in the office of the clerk of the Supreme Court, may be taken as the return of the clerk of the Circuit Court of Appeals for the Ninth Circuit to the writ of certiorari issued herein.

(Signed) JNO. W. DAVIS (H.),
Solicitor General.

(Signed) BRAGNON, ROBINSON & JONES,
Counsel for Respondent.

April 27, 1917.
(File No. 162270.)

(Endorsed:) No. 2621. United States Circuit Court of Appeals for the Ninth Circuit. The United States of America, appellant, vs. William B. Poland and Frederick William Low, appellees. Stipulation as to return to writ of certiorari. Filed May 9th, 1917. F. D. Monckton, clerk.

91 United States Circuit Court of Appeals for the Ninth Circuit.

THE UNITED STATES OF AMERICA, APPELLANT,
vs.
WILLIAM B. POLAND AND FREDERICK WILLIAM LOW, appellees. } No. 2621.

Certificate of clerk, U. S. Circuit Court of Appeals to stipulation as to return to writ of certiorari from the Supreme Court of the United States.

I, Frank D. Monckton, as clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the next preceding page to be a full, true, and correct copy of a "Stipulation as to return to writ of certiorari," filed in the above-entitled cause on the 9th day of May, A. D. 1917, as the original thereof remains on file and appears of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the city of San Francisco, in the State of California, this 9th day of May, A. D. 1917.

[SEAL.] F. D. MONCKTON, *Clerk.*

92 United States Circuit Court of Appeals for the Ninth Circuit.

THE UNITED STATES OF AMERICA, APPELLANT, vs. WILLIAM B. POLAND AND FREDERICK WILLIAM LOW, appellees.	No. 2621.

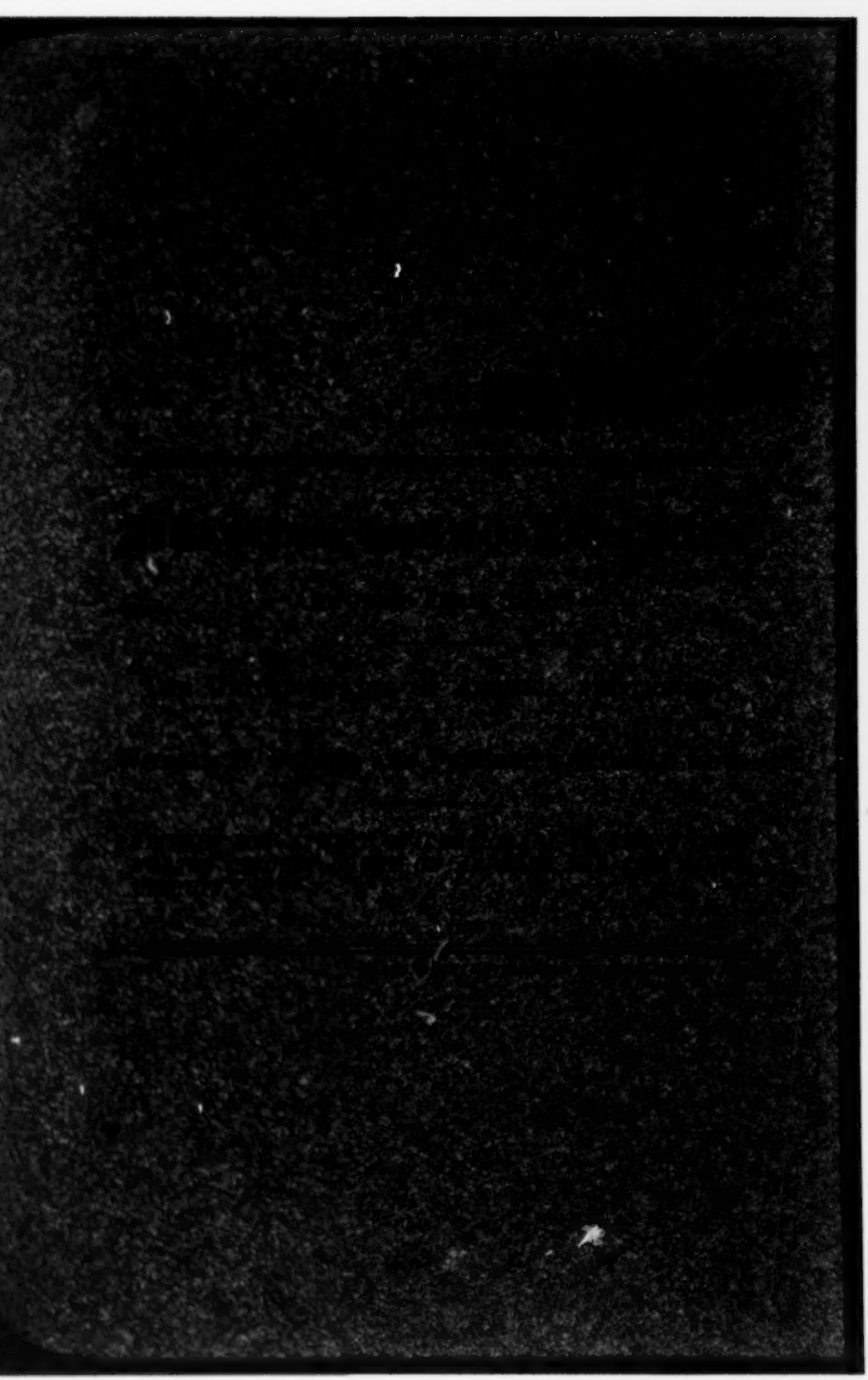
Return to writ of certiorari.

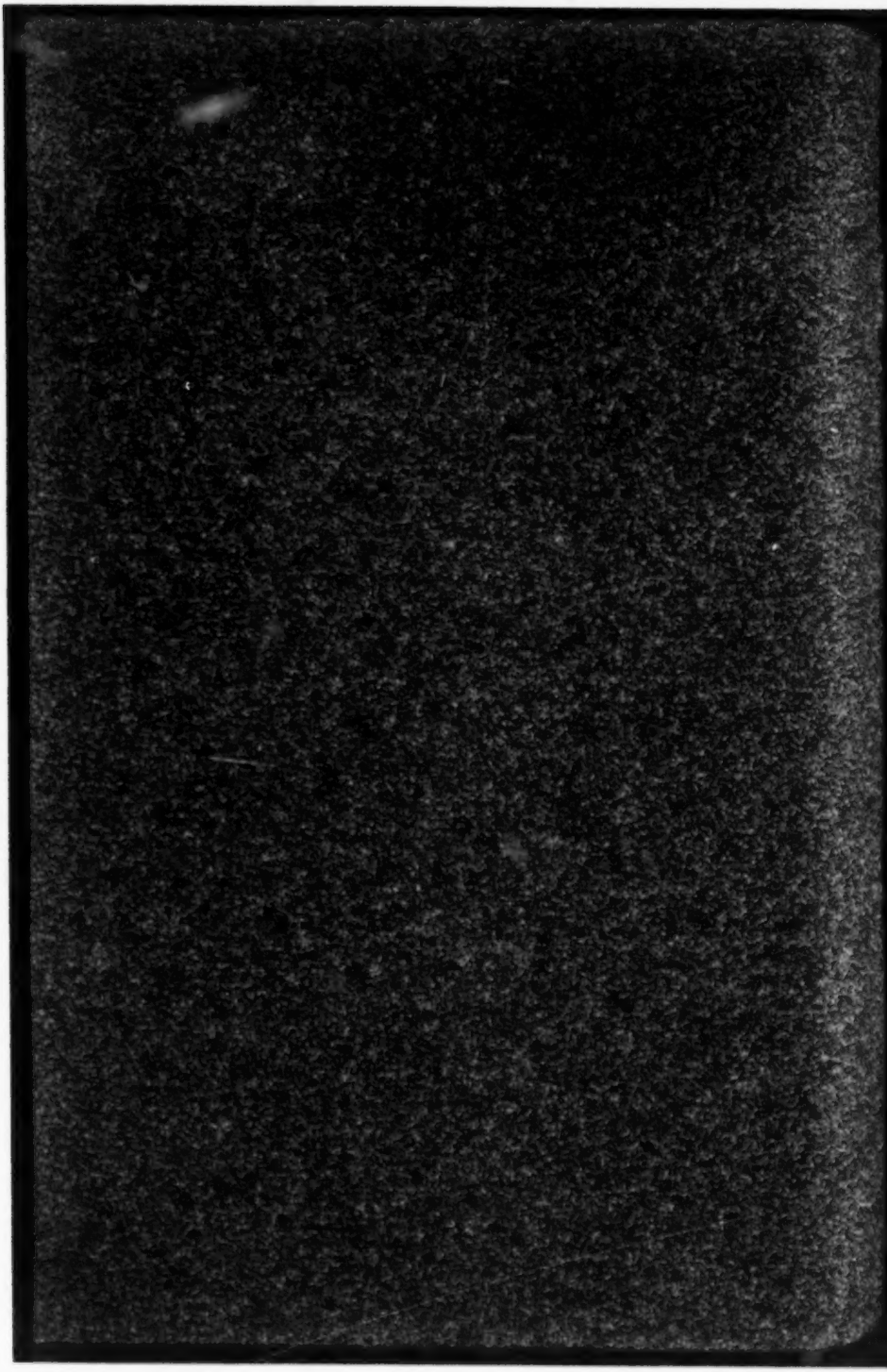
By direction of the honorable the judges of the United States Circuit Court of Appeals for the Ninth Circuit, I, Frank D. Monckton, as clerk of said court, in obedience to the annexed writ of certiorari issued out of the honorable the Supreme Court of the United States and addressed to the honorable the judges of the United States Circuit Court of Appeals for the Ninth Circuit, commanding them to send, without delay, to the said Supreme Court the record and proceedings in the above-entitled cause do attach to the said writ and send to the said Supreme Court a certified copy of a "Stipulation as to return to writ of certiorari," in which said stipulation it is provided that the certified transcript of the record heretofore filed by the appellant in said cause in the said Supreme Court as a part of its petition for a writ of certiorari may be taken as the return to the said writ of certiorari, the original of which stipulation was filed in my office on this 9th day of May, A. D. 1917.

In testimony whereof I have hereunto set my hand and affixed the seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the city of San Francisco, in the State of California, this 9th day of May, A. D. 1917.

[SEAL.] F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

93 (Indorsed:) File No. 25845. Supreme Court U. S., October term, 1916. Term No. 1015. The United States, petitioner, vs. William B. Poland et al. Writ of certiorari and return. Filed May 15, 1917.





In the Supreme Court of the United States.

OCTOBER TERM, 1916.

THE UNITED STATES OF AMERICA, PETITIONER,
v.
WILLIAM B. POLAND AND FREDERICK WILLIAM LOW. } No. ——.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

To the Supreme Court of the United States:

The Solicitor General, on behalf of the United States, prays for a writ of certiorari to review the judgment of the Circuit Court of Appeals for the Ninth Circuit in the above-entitled case.

THE FACTS.

On April 26, 1906, William B. Poland entered two tracts of public land in Alaska, one for 159.75 and the other for 160 acres, designated as surveys Nos. 241 and 242, respectively. These entries were made by him as assignee of four soldiers' additional rights, using two thereof for each one of the entries. The two surveys formed one continuous body of land containing approximately 320 acres (R. 6–8). Nearly the entire length of the southern boundary of survey No. 241

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follows the shore line of Resurrection Bay. Survey No. 242 lies immediately north of 241 and does not touch the bay or any navigable water (R. 33). In due time patents were issued on both entries. This suit was brought to cancel the patent issued upon survey No. 242 on the grounds that it was erroneously issued and was obtained by fraudulent representation. The allegation of fraud was based upon the said Poland's affidavit that the land embraced in survey No. 242 was more than 80 rods distant from any other survey or entry under the provisions of the act of May 14, 1898, 30 Stat. 409, which representation misled and deceived the officers of the General Land Office (R. 7, 8). The District Court sustained a demurrer to the bill and dismissed the suit (R. 26–32). The decree was affirmed by the Circuit Court of Appeals for the Ninth Circuit, Judge Rudkin filing a dissenting opinion.

REASONS FOR THE ALLOWANCE OF THE WRIT.

I.

The act of Congress of March 3, 1903, 32 Stat. 1028, provides as follows:

> That all the provisions of the homestead laws of the United States not in conflict with the provisions of this act, and all rights incident thereto, are hereby extended to the district of Alaska, subject to such regulations as may be made by the Secretary of the Interior; and no indemnity, deficiency, or lieu land selections pertaining to any land grant outside of the district of Alaska shall be made, and no land scrip

> or land warrant of any kind whatsoever shall be located within or exercised upon any lands in said district except as now provided by law; and provided further, that no more than one hundred and sixty acres shall be entered in any single body by such scrip, lieu selection, or soldier's additional homestead right; and provided further, that no location of scrip, selection, or right along any navigable or other waters shall be made within the distance of eighty rods of any lands, along such waters, theretofore located by means of any such scrip or otherwise; * * *

The Government contended, and now contends, that the proviso forbidding the entry of more than 160 acres of lands in Alaska in a single body under soldiers' additional homestead rights is a distinct and independent prohibition meaning exactly what it says and requiring no interpretation or construction. The majority of the court, however, in its opinion, connects this prohibition with the language following, which is intended to protect the lands bordering upon the shores of navigable waters from being entered or patented in continuous bodies. To sustain this view the majority of the court discussed at length the legislative history of the bill; showed that the proviso here relied on first appeared in the bill as a conference committee amendment; referred to the rule that such amendments must be germane to some provision in the bill as passed by one of the Houses, and held that it was germane only to the provision for protecting the shore line, intimating that otherwise it would be void and of no effect. As survey No. 242

does not touch the shore line, the court accordingly held that the patent was valid. It is believed that this view of the statute is erroneous, and that the law is correctly stated in the dissenting opinion of Judge Rudkin.

II.

The Secretary of the Interior has requested that action be taken to secure a review of the decision by this court, saying that the construction of the statute above set forth "is of great importance in the administration of the public lands in the district of Alaska." This court will no doubt take judicial notice of the special efforts made both by Congress and the governmental departments to prevent monopoly and speculative acquisition of the public lands in Alaska. Soldiers' additional homestead rights are assignable (*Webster* v. *Luther*, 163 U. S. 331), and there is no limitation upon the number of such rights that may be purchased by one party and no limitation other than those contained in the statute above quoted upon the quantity of lands that may be entered by means of such rights. It is apparent, therefore, that if the decree of the Circuit Court of Appeals is permitted to stand a very great safeguard against monopoly and speculative acquisition of the public lands in Alaska will be removed.

III.

The court's attention is especially called to the fact that decrees in suits brought to cancel land patents in any of the States of the Union may be

reviewed here on appeal as of right in all cases where the value in dispute exceeds $1,000, besides costs. Judicial Code, secs. 241, 128, 36 Stat. 1133, 1134. Section 134 of the Code, however, declares:

> In all cases other than those in which a writ of error or appeal will lie direct to the Supreme Court of the United States as provided in section 247, in which the amount involved or the value of the subject-matter in controversy shall exceed $500, and in all criminal cases, writs of error and appeals shall lie from the district court for Alaska or from any division thereof, to the circuit court of appeals for the ninth circuit, *and the judgments, orders, and decrees of said courts shall be final in all such cases.*

This language, taken in connection with the language of section 241, seems clearly to preclude any appeal to this court from a judgment or decree of the Circuit Court of Appeals for the Ninth Circuit in a case of this character, even though, as here, the amount involved exceeds $1,000 and costs. The reason for such a discrimination as against cases arising in Alaska is not apparent, and the suggestion is ventured that possibly it was due to some oversight or inadvertence on the part of Congress. It is believed that the present case is of sufficient importance to justify the issuance of a writ of certiorari, and it is, therefore, respectfully submitted that the writ should issue as prayed.

JOHN W. DAVIS,
Solicitor General.

MARCH, 1917.

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